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The economics of health in a post-industrial society

VICTOR R. FUCHS

THE most important, and perhaps the most surprising, finding of health economics is this: Holding constant the state of medical technology and other health-determining variables, the marginal contribution of medical care to health is very small in modern nations. Those who advocate ever more physicians, nurses, hospitals, and the like are either mistaken or have in mind objectives other than the improvement of the health of the population.

The earliest studies that reported this conclusion were greeted with skepticism in some quarters because the analyses typically relied on mortality as the measure of health. Mortality, it was said, is a rather crude index of health. It was suggested that more sophisticated measures would reveal the favorable effects of greater numbers of physicians, nurses, and hospital beds. A recent RAND study, however, based on six more specific indicators of ill health (cholesterol levels, varicose veins, high blood pressure, abnormal chest X-ray, abnormal electrocardiogram, and a periodontal index) provides striking confirmation of the results based on mortality. Variations in the amount of health resources available across 39 metropolitan areas of the United States had no systematic effect on these health measures taken alone or in combination.

The lack of correlation between medical care and health is ap-

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parent in many countries other than the United States. In Great Britain, for instance, the National Health Service (NHS) has undoubtedly served to reduce sharply class differences in *access* to medical care, but the traditionally large class differentials in infant mortality and life expectancy are no smaller three decades after the establishment of NHS. Also, despite free access to medical care, time lost from work because of sickness has actually increased greatly in Britain in recent decades. The number of sick days depends on many factors in addition to health, but these data hardly support the notion that there has been a large payoff from the NHS in that area. The discrepancy between health and medical care is even sharper in the USSR. In recent years there has apparently been a deterioration in health as measured either by infant mortality or life expectancy, even though the Soviet medical-care system is said to have improved.

There are several reasons why an increase in medical resources, given a reasonable quantity as a base, does not have much effect on health. First, if physicians are scarce, they tend to concentrate on those patients for whom their attention is likely to make the most difference. As doctors become more plentiful, they naturally tend to spend more time on patients less in need of attention. Second, patients also alter their behavior, depending upon how easy or difficult it is to get to see a physician. When physicians are more numerous, patients tend to seek attention for more trivial conditions. Third, many of the most effective interventions, such as vaccinations or treatment of bacterial infections, require only modest amounts of resources. Quite often, one "shot" goes a long way. On the other hand, the long-term benefits of some of the most expensive procedures, such as open-heart surgery or organ transplants, are still in doubt. Fourth, there is the problem of "iatrogenic disease"—illness that arises as a result of medical care. Because medical and surgical interventions are more complex and extensive than ever before, they carry with them greater risk. Sometimes too much care, or the wrong care, can be more deleterious to health than no care at all. Finally, it is becoming abundantly clear that factors other than medical care (for example, genes, environment, life style) play crucial roles in many of the most important health problems.

To this point the question we have been considering has been, in effect, what will be the results of increasing the quantity of physicians, nurses, and hospitals, in the absence of a change in the way care is delivered. Yet for a full understanding of the issue, we must examine another question as well: What will be the effects on

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health of a given quantity of physicians, nurses, and hospitals if there has been some advance in medical science?

Progress in medical science

It seems to me that some writers, in their answers to this question, have overstated the "medical care doesn't matter" argument. For example, there is no doubt that medical progress was slow until well into the 20th century. But from about 1935 to about 1955—a period which marked the introduction of anti-infectious drugs—major improvements in health were recorded in all industrial nations. The decreases in mortality were far greater than could be attributed to general economic advance, increases in the quantity of medical care, or similar changes.

With some delay, the application of new knowledge also improved health in the less-developed countries, and at unprecedented speed. Life expectancy, which in 1940 averaged only 39 years in Asia, Africa, and Latin America, rose to 60 years by 1970—an increase I believe largely attributable to the introduction of modern medical and public-health technology. By contrast, in the United States the same change in life expectancy—from 39 to 60 years—required three-quarters of a century, from 1855 to 1930, because health technology was developing so slowly at that time.

It is clear that the pace at which medical progress contributes to the improvement of health is neither steady nor predictable. During the 1960's many "breakthroughs" in medical science were hailed, and expenditures for medical care rose appreciably, but the favorable consequences for health were quite limited. In recent years, however, U.S. death rates—especially from heart disease—have decreased rapidly. For men and women at most ages, the probability of death from arteriosclerotic heart disease in 1975 was 20 to 25 percent lower than in 1968. The technologically-inclined attribute most of this decrease to better control of hypertension, special coronary-care units, open-heart surgery, and other medical innovations. Other observers tend to credit changes in diet, smoking, exercise, and other aspects of personal behavior. We do not know the true explanation; I suspect there is some validity to both points of view.

Income, education, and good health

For most of human history, income has been the primary determinant of health and life expectancy—the major explanation for differ-

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ences in health among nations and among groups within a nation. The effect of income on health is still observed in the less-developed nations, but in the United States the correlation has tended to disappear. This is true when health is measured by mortality, or by indicators such as high blood pressure, varicose veins, cholesterol levels, and abnormal X-rays or cardiograms, or by subjective evaluation of health status. Other things equal, there is no longer any systematic effect of income on health, except possibly at the deepest levels of poverty.

In the past, economic growth and technological change not only served to increase *average* life expectancy, but also resulted in a dramatic reduction in *inequality* in life expectancy among different economic classes. The principal reason for the reduction is that general economic growth, even if unaccompanied by any reduction in income inequality, has more favorable effects on the health of the very poor than on those who have already attained a standard of living well above subsistence. A second reason is that the most effective medical discoveries of the past half-century, such as antibiotics, have typically been both relatively low in cost and widely available.

Not only has the distribution of life expectancy become much more nearly equal within the U.S. white population, but the difference between white and nonwhite life expectancy has also been reduced substantially in this century. In 1900, life expectancy for whites was 47 percent higher than for nonwhites; in 1975 the differential was 8 percent. The overall reduction in inequality of life expectancy bears a strong relation to reduction in inequality by income class. In 1900, those with short life expectancy were disproportionately from the lower half of the income distribution. Now, with the correlation between income and life expectancy much weaker, we can say that with respect to the most precious good of all, life itself, the United States is approaching an egalitarian distribution.

Despite the general trend toward equality in life expectancy, there is one factor that *consistently* appears as a significant correlate of good health: education. The same research by health economists that has revealed the small marginal contributions of medical care and income to health has reported a strong positive relation between health and years of schooling. In the United States, regardless of the way health is measured (mortality, morbidity, symptoms, or subjective evaluation), and regardless of the unit of observation (individuals, city or state averages), *years of schooling usually emerges as the most powerful correlate of good health.* Michael Grossman,

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an economist who has done extensive research on this question, has tended to interpret this relationship as evidence that *schooling increases the individual's efficiency in producing health,* although he recognizes that some causality may run from better health to more schooling. The way schooling contributes to efficiency in producing health has never been made explicit, but Grossman has speculated that persons with more education might choose healthier diets, be more aware of health risks, choose healthier occupations, and use medical care more wisely.

I accept the "efficiency" hypothesis, but I think that it needs some qualification. Education, for instance, seems to have little connection with the more knowledgeable use of medical resources. Recent research on surgical utilization casts doubt on the proposition that the better-educated use medical care differently than do the less-educated. While the probability of surgery is much lower for the highly educated than for the rest of the U.S. population, a new study by Louis Garrison shows that the highly educated who do undergo surgery enter the hospital at the same stage of disease as do the less-educated. He also finds that the better-educated patients choose the same kinds of physicians, have about the same length of stay, and apart from the fact that their general health is a little better than average, have about the same outcomes from surgery. Thus, at least in the context of in-hospital surgery, there is little support for the "efficiency" effect in the use of medical care.

The most plausible explanation for the lower surgery rates of the highly educated is that they have less need for surgery—that is, they are in better health. The question remains, why? One explanation that I favor is that both schooling and health are manifestations of differences among individuals in the willingness and/or ability to invest in human capital. Both schooling and health-related activities involve incurring current costs for the sake of future benefits, and it seems quite clear that individuals differ in their willingness to make such far-sighted investments.

Recent preliminary research gives some support to the view that individual differences in willingness and ability to delay gratification are related to health. A colleague and I surveyed a group of young adults to ascertain their "rate of time discount" with respect to receiving money awards and paying fines. The time-discount rate can serve as a rough measure of the degree to which individuals are willing to postpone satisfaction over time. An individual with a low discount rate, for example, is one who is willing to delay reward over a longer period of time, or willing to accept a smaller

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reward for any given period of delay, than is a person with a high discount rate. In our research, my colleague was interested in the pattern of the rates—how they changed with length of time involved, the size of the award, and the like. I added a few questions about the respondents' health and then looked at the relation between health and discount rate. I found a strong, statistically significant *negative* relation between the rate of discount and the subjective assessment of health. Of the 25 percent of the sample with the lowest discount rates, 63 percent reported themselves in excellent health; of the quarter with the highest rates, only 32 percent reported themselves in excellent health.

Some recent statistics from England provide additional support for my view of the correlation between health and schooling. A study of cigarette smoking revealed that among men in social class I (the highly educated) the proportion who smoked fell almost by half between 1958 and 1975. In contrast, among men in social class V (the poorly educated) the proportion scarcely changed. It seems unlikely that this difference in behavior arises primarily because the poorly educated have not heard about the dangers of smoking or do not understand the implications for health. It is more likely that they are unwilling (or unable) to give up a present pleasure for a distant and uncertain benefit. I suspect that if one compared these two groups of men with regard to other aspects of behavior that involve using foresight or delaying satisfaction (such as saving versus buying on credit), one would find similar differences.

The growth of medical care

Despite the conclusion supported by these findings—that health is much more dependent on non-medical factors than on the quantity of medical care—the growth of expenditures for medical care has been unrelenting. For at least the past three decades (and probably for much longer) the share of gross national product devoted to medical care has steadily increased in the United States and elsewhere. In several countries, the portion of national resources devoted to health is rapidly approaching 10 percent. There are several possible explanations for the rapid growth of health care as an industry.

One popular, but I believe exaggerated, explanation for the relative growth of service industries in general is the growth of per capita income. But with respect to health care, higher income is clearly not a *direct* causal factor. Precise estimates of the income

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elasticity of the demand for health care differ, but almost all investigators agree that the demand for health care does not rise in direct proportion to a rise in per capita income. People behave as if health care were a "necessity," not a "luxury."

Thus, the growth in medical care's *share* of the GNP and of total employment is not attributable to rising income. Rather, the employment trend in the medical industry reflects a change in the character of health care itself. Labor "input" per patient, especially in hospitals, has grown at an extremely rapid rate. In 1976, there were 304 full-time-equivalent employees per 100 patients in American short-term hospitals, compared with 178 per 100 patients in 1950. The character of hospital *activity* has also changed greatly since 1950. Each patient now has many more tests and X-rays, more complex surgery is performed, and new treatment facilities—such as intensive-care units—have proliferated.

I use the word "activity" rather than "output" deliberately, because we are far from knowing how much this increased activity has resulted in better health. Some changes in medical technology, such as the anti-infectious drugs mentioned previously, have clearly raised productivity enormously, but the only thing we know with certainty about some of the other technological changes is that they have greatly raised expenditures.

Medical Technology. The explosion of medical technology—the vast expansion in the character and scope of interventions that physicians can undertake—has, unquestionably, been a major factor in the growth of health expenditures in recent decades. Familiar examples include renal dialysis, open-heart surgery, organ transplants, and high-energy cancer treatments. These innovations may or may not make large contributions to improved health, but relative ineffectiveness does not deter their use.

In the past I have referred to the proclivity of physicians to employ new technologies, simply because they exist, as the "technological imperative." Recent economic research, however, provides a different explanation for the emphasis on expensive treatments that yield little in lives saved—while preventive treatments with higher productivity are denied resources. This tendency may be fully consistent with consumer preferences regarding the kinds of health services they are willing to pay for. The amount most people are willing to pay for a given reduction in the probability of death is positively related to the *level* of the probability. Thus, a person facing almost certain death would usually be willing to pay a great deal for even a small increment in the chance of survival; that same

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person, facing a low probability of death, would not pay nearly as much for the same increment in survival probability.

For example, imagine a program to treat cancer that costs $1 million per life saved, and another program to lower the probability of getting cancer that costs only $500,000 per life saved. People might be more willing to pay for the treatment if sick, than to pay for the prevention if well. This behavior is not necessarily "irrational," nor need it be the result of some "death-denying" psychological quirk. We do not think it odd that a thirsty man will pay a large amount for a small drink of water if there is very little available, but is not willing to pay much for a drink when he is not particularly thirsty.

The medical profession has frequently been criticized for failing to allocate resources so as to maximize the number of lives saved, but some of this criticism may be unjustified—at least in the sense that the emphasis on heroic efforts in life-threatening situations, at the expense of preventive measures, may actually be a reasonable response to consumer preferences. It follows that if we seek a health-care system that does what people want it to do, we should not expect the most efficient outcome in terms of costs per life saved.

Other causes

Government, Family, and Religion. There are three non-medical factors that I believe have also contributed substantially to the growth of the health-care industry: the growth of government, the decline in importance of the family, and the weakening of traditional religion. The subsidization of health care by government clearly induces additional demand. Nearly all health economists who have studied the *price* elasticity of demand for health care have found that a decrease in price does not result in as proportionally great an increase in demand—but all have found *some* increase in demand accompanying a drop in price. It follows that a reduction in the price of medical care (at the time of utilization) through public (or private) insurance increases the quantity demanded.

The effects of the decline of the family and of traditional religion are more difficult to quantify, but I shall offer a few examples to convey the flavor of the argument. Consider nursing homes. In the U.S. they are by far the fastest-growing component of health care; their share of total health spending climbed from less than 2 percent in 1960 to almost 8 percent in 1977. Nursing-home ex-

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penditures now exceed spending for drugs or for dentists' services; the only larger categories are hospitals and physicians' services. But what is a nursing home and what services does it provide? I would argue that it provides very little that was not provided in the past at home by the family. Indeed, in some cases it does not provide as much.

To be sure, the growth of nursing homes is attributable in part to growth in the relative number of the aged. But more important, in my opinion, is the growth in female labor-force participation (no one is at home) and the mobility of the population. Elderly widows comprise the bulk of the nursing-home population, and there has been a tremendous increase in the percentage of widows 65 and over who live alone. In 1950 that figure was 25 percent; in 1976 it was 65 percent. True enough, rising income makes living alone possible and helps pay for nursing-home care; but my main point is that a considerable amount of what we think of as an *increase* in health care is not an increase at all, but a substitute for care that was formerly provided within the family.

Not only does purchased medical care in part take the place of the family, but I believe that it is frequently a modern substitute for religion. This is most obvious in the case of mental illness. The similarity between psychiatry and religion has been frequently discussed; it needs to be emphasized, however, that many visits to physicians who are not psychiatrists are undertaken for purposes other than specific diagnostic or therapeutic intervention. The patient may be seeking sympathy, or reassurance, or help in facing death (his own or that of someone close to him). The patient may want to unburden himself to an authority figure who will keep his secrets confidential. There may be a desire to find someone to assume responsibility for a difficult decision, or there may be a need for validation of a course of action already decided upon. The ability to state, "The doctor says I should (or shouldn't) do this" often is worth a great deal.

In an earlier day priests, ministers, and rabbis met many of these demands. For some persons they still do—but today many find a white coat more reassuring than a black one, a medical center more impressive than a cathedral. One interesting statistic reveals the change in the customary site of death. In an earlier day dying was usually a private affair, attended by family and friends, and legitimized by priest, or shaman, or witch doctor. Today, in most Western nations, more than half of all deaths occur in hospitals. The physician is now our chief ambassador to death.

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The growth of government

The expansion of government in all aspects of health is a major political phenomenon requiring separate consideration. There are several possible explanations for this trend in post-industrial society.

One likely reason is the ever-increasing complexity of modern life. Consumers are now faced with a bewildering array of goods and services and they feel a great need for information about them. There can be significant economies of scale in the provision of information about the quality of beef, the purity of drugs, and the safety of airlines; it may, therefore, be more efficient to have a single agency, the government, provide that information.

Many observers also believe that urbanization and the growth of population and income have increased the importance of *externalities,* so that there is legitimate scope for the government to do more than simply provide information. A health-related externality exists if Smith's consumption or other actions have favorable (or unfavorable) effects on Brown's health, but these effects are not reflected in the prices Smith faces and there is no feasible way for Smith and Brown to make a private arrangement that would cause Smith to take these effects into account. Familiar examples in this category include vaccinations (positive externality) and air pollution (negative externality). When externalities exist, the solution most economists prefer is to use subsidies or taxes to bring private costs (or benefits) into line with social benefits (or costs). Direct regulation which compels or forbids certain activities outright should generally be avoided unless the costs of administering the subsidies or taxes are unreasonably high.

A special kind of externality discussed by Guido Calabresi and Philip Bobbitt in their recent book *Tragic Choices* concerns society's unwillingness to see some of its members (typically the very poor) take unusual risks or pursue degrading activities. This kind of externality sometimes results in a demand for health-related government regulation. An example is the inhibition regarding the sale of kidneys or other organs by living donors. It seems to me that issues of this character are really just matters of taste; they have more to do with "aesthetic" considerations than with a moral or practical concern for the health of members of society. The importance of taste and social conventions in these matters is nicely illustrated by the fact that society readily permits individuals to work in coal mines and to pursue other activities that are far more dangerous to health than is the loss of one kidney.

But modern governments clearly go far beyond providing infor-

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mation or dealing with obvious health-related externalities. In the United States especially, the government, in the name of health and safety, now undertakes detailed regulation and control of thousands of products and activities. One possible reason for the proliferation of government interventions is that they serve as a form of "pre-commitment" concerning certain kinds of behavior. In other words, Brown may vote for laws which force persons in Smith's circumstances to behave in ways contrary to Smith's preference in order to pre-commit himself (Brown) if his circumstances should change to those of Smith. For example, Brown may think that if he were to become poor he might be tempted to sell a kidney. He therefore now votes to make such sales illegal in order to prevent himself from ever taking such action. Health insurance can be regarded as a form of pre-commitment; the insured is pre-committing himself to disregard price in making decisions about the utilization of care. *Compulsory* health insurance can be viewed as pre-commitment to buy insurance regardless of changes in income or other circumstances.

Conventional economic analysis regards "pre-commitment" as irrational; why should anyone ever want to gratuitously restrict his options? Economist Richard Thaler has suggested an answer: "pre-commitment" may be a rational strategy for dealing with problems of self-control. Such problems can arise when there is tension between alternative behaviors which have very different implications for our welfare in the short and long run. For instance, in the short run I may get pleasure from smoking or from spending, but I also know that in the long run I will suffer from smoking or from a lack of savings. I may pre-commit myself by taking a job where smoking is prohibited, and I may join a Christmas Club.

The growth of government can also be viewed as a substitute for family or church as the principal institution assisting individuals in time of economic or social misfortune. Private insurance could conceivably do the same job, but problems of "free riders" (those who don't buy insurance and then need help anyway), adverse selection (the tendency for the worst risks to buy the insurance), or excessive sales and administrative costs may make universal, compulsory programs the more sensible way to proceed. Moreover, a principal thrust of many government programs is to combine insurance with redistribution. Indeed, I believe that an unrelenting pressure for a more egalitarian society is one of the most important explanations for the growth of government in health and other areas.

The conditions of modern life seem to compel a more equal sharing of material goods and political power. In *Equality and*

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Efficiency: The Big Tradeoff, Arthur Okun assumes this occurs because people have a "preference" for equality. Perhaps some do, but it is also possible that many who have power and goods would rather not share them; their ability to maintain inequality, however, may vary with circumstances. It seems to me that the more affluent and the more complex a society becomes, the more it depends on the willing, cooperative, conscientious efforts of the people who work in that society and the more difficult it is to obtain satisfactory effort through the use of force.

When the main task at hand consisted of hauling large blocks of stone from the river to the pyramid, it was a relatively simple matter to rope a dozen slaves together and use a whip and the threat of starvation to secure compliance. In feudal societies the predominantly agricultural workforce was kept in line despite huge inequalities in income through force, the need for protection, the limited mobility of the poor, and through the promise of Heaven and the threat of Hell. But when a nation's workers are airplane mechanics, teachers, and operating-room nurses, for example, it is clear that such techniques will not do. A few dissatisfied air-traffic controllers can change the pace of a continent. Even such low-paid work as the changing of tires in a tire store involves considerable potential for disruption. It would be very expensive to check every bolt on every wheel, but the management lives in constant fear that a few carelessly tightened bolts will allow a wheel to fall off and result in a million-dollar suit against the company.

The preoccupation with equality or the *appearance* of equality is evident in many discussions about health. With respect to the British National Health Service, for instance, economists John and Sylvia Jewkes have argued that "The driving force behind [its] creation . . . was not the search for efficiency or for profitable social investment. It was something quite different: It was a surging national desire to share something equally." As noted earlier, the effects of the establishment of the NHS seem consistent with that view.

Or think of the buckets of ink that have been spilled over the issue of regional inequality in the physician-to-population ratios in Canada, the United States, and most other countries. In the United States at least, this interminable discussion has proceeded without any evidence that health is adversely affected by a low physician-to-population ratio. Indeed, in the U.S. one cannot even show that the number of physician visits per capita is significantly lower in areas that have been identified as "medically under-served." Moreover, the oft-heard argument that an overall increase in the number of phy-

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sicians will result in a reduction in regional inequality seems to be without empirical foundation.

The more one examines this issue the more puzzling it appears. Nearly everyone says regional inequality in physician supply is bad, but no one quite explains why. Nearly everyone says it should be reduced, but not much is done about reducing it. In California, for a long while, we had the spectacle of the state's political leaders voicing loud complaints about how difficult it was to get physicians to settle in rural areas at the same time that they were setting fee schedules for MediCal (Medicaid) patients that reimbursed rural physicians at a lower rate than their urban counterparts. In my view, national health insurance and other governmental interventions in health are best viewed as political acts undertaken for political and social objectives relatively unrelated to the health of the population. This seems to be an inescapable conclusion from the evidence now available.

Theories of the Right and Left

The foregoing analysis gives us some basis for evaluating the general positions advanced by the Right and the Left about medical care, particularly concerning the role of government in the health field. The positions of conservatives and radicals are usually clearcut and often provocative. In my judgment, however, they are ultimately unsatisfactory either as analysis of how we have come to our present position or as prescription for our future direction.

For the most part, conservatives argue against large-scale government intervention in medical care, consistent with their general tendency to recommend a decentralized price system as the most efficient mechanism allocating scarce resources. Frankly, it's a shame that we need to be reminded of this—surely theory and experience combine to teach us that the alternative (some sort of centralized control) will usually be much less efficient.

To this extent, conservatives offer a potentially valuable critique of current trends in the health-care industry. But where the Right goes wrong is in their lack of historical understanding of the sources of those current trends. The conservative response to the growth of national health insurance around the world is to castigate it as one more deplorable trend towards socialism. When pressed for an explanation of the trend, the Right offers two unsatisfactory types of response. First, there is the "people are stupid" explanation. The same people who are supposedly so knowledgeable when running

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businesses or choosing occupations or spending money are suddenly presumed foolish, irrational, or worse when they must make choices about government health policy. This is an easy out, but not a very convincing one. If there is some widespread behavior that we do not understand, let's not automatically attribute it to the other fellow's ignorance or irrationality.

Not all conservatives subscribe to the "people are stupid" theory. A substantial number try to explain the growth of national health insurance and similar (in their view) misguided legislation as the triumph of special interests over the general public interest. The research strategy is to identify the special groups that benefit from policies that seem to result in a general welfare loss (and many economists believe national health insurance fits that category because it encourages excessive utilization). A second task is to figure out how these groups are able to assert and maintain their interest over that of the majority. Sometimes this approach is useful, but with respect to explaining the growth of national health insurance, it has not been notably successful. Indeed, in the United States, one special-interest group that has benefited greatly from Medicare and Medicaid has been the physicians—and they were in the forefront of the groups who opposed such legislation.

What the Right apparently cannot accept—but neither can it refute—is the hypothesis that national health insurance comes to developed countries not out of ignorance, not out of irrationality, not at the behest of narrowly defined special-interest groups, but because most of the people want it, because it meets certain needs better than alternative forms of organization. That these needs are often political, social, and psychological rather than physiological is one of the most important points of this essay. Thus, it seems to me that the fulminations of the Right against the ever-increasing role of government in health are often misdirected. The constant assertions that this or that regulation or subsidy is irrational and inefficient often fall on deaf ears simply because the majority doesn't see it that way.

Let us turn now to the Left. And let us again begin on a positive note. We should be grateful to the Left for two reasons. First, they remind us that a decentralized price system isn't *always* the best way to allocate scarce resources. There are things such as externalities and transaction costs which may mean that some allocation problems are better handled by institutions other than the market. And there are, as we have seen, reasons of this sort which may justify government intervention in the health field.

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More importantly, the Left at its best makes a contribution by keeping before us a vision of a just society. Like the prophets of old, they scold, they warn, they preach. The big problem with the Left is not their inability to identify important problems. It is their "analysis" of the causes and their proposed solutions that must give one pause. Who among us does not think that health is better than illness, life better than death? But to state worthwhile goals is one thing; to have some good ideas about how to reach them is another.

Among the Leftist critiques of health and medical care there is, for example, the naive reformist position typified by, say, John Kenneth Galbraith. According to this view, the problem is one of insufficient public funds. If only we had more hospitals, more physicians, more medical schools, and so on, the problem would be solved. This at a time when, in the United States, there is excess hospital capacity in every major metropolitan area, when general surgeons are carrying what they themselves agree is only 40 percent of a reasonable workload (and there is widespread suspicion that many of the operations should not be done), and when iatrogenic illness (arising out of the medical-care process itself) is a major problem! That so many on the Left can still believe so many shibboleths is a tribute to the triumph of ideology over analysis. This view, that "more is better," has been sufficiently refuted by the findings I have reviewed in the first part of this paper.

There is another type of Leftist critique, however, which is slightly more sophisticated and far more radical. Far from simply prescribing "more medical care," these critics argue that the "system" is at fault. The trouble, we are told, is that providers are oriented to profits rather than to health, that if only we made the system more "democratic," placed public health at top priority, put physicians on salaries, and so on, all would be well. Would it? Right now in the U.S. about 95 percent of the hospital industry is in the hands of nonprofit organizations, either public or private, yet the escalation in costs in these hospitals has been tremendous, and the emphasis on complex, esoteric technology very great. When we look at other systems with other forms of organization and reimbursement, such as in England or Russia, do we see more emphasis on preventive medicine, more action on environmental-health problems, more consumer control of the medical process? The answer is overwhelmingly negative.

Because the Left is so eager to attribute the problems of the world to capitalism, it ignores some basic observations about human behavior. Most of the health problems which they identify existed

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before capitalism and persist in non-capitalist countries. Many problems arise from the conflict between health and other goals, rather than from the evil or selfish intent of physicians. Personal behavior and genetic endowment are far more important to health than is medical care—*whatever the system.* Even when medical care is relevant, health is rarely something one person can *give* to another. It comes, if at all, from the efforts of physician and patient working together, often in the face of uncertainty and fear.

One of the strongest generalizations warranted by a comparative study of medical care in modern nations is the inability of planning agencies, insurance funds, hospital boards, and other lay authorities to control completely the medical profession. In country after country the introduction of national health insurance was marked by significant concessions to physicians with respect to methods and levels of reimbursement, procedures for reviewing the quantity and quality of care, geographical and specialty choice, and control over allied (competing?) professions.

There are, I think, some very subtle factors at work here. The effectiveness of medical care depends in considerable measure on a bond of mutual confidence between physician and patient. Too much external control can break that bond. Moreover, physicians, like priests or magicians, can fill their roles effectively only if set apart from the common run of mankind. A medical profession that was completely subservient to lay authority would be, in several respects, a less effective profession. This is not to say that fee-for-service reimbursement never leads to over-utilization, or that licensure laws are completely in the public interest, or that present institutional arrangements are ideal. It is to say that many of the most difficult problems of health and medical care transcend particular forms of economic and political organization—a conclusion that the Left leaves out.

By way of conclusion

What speculative generalizations do I draw from a broad economic survey of health and medical care in modern society?

For one thing, I am impressed by the widespread confusion between process and product, the tendency to identify medical care with health even though the connection is a fairly limited one. I wonder if that same confusion does not exist in other aspects of society, for example, schooling vis-à-vis learning, litigation vis-à-vis justice, or police work vis-à-vis public safety?

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The growth of big government in modern society stands as a major challenge for social analysis. My reading of its role in health and medical care leads me to emphasize two factors—the decline of other institutions and the pressure for a more egalitarian society. It seems clear to me that the success of the market system in the Western world was attributable in no small measure to the existence of strong non-market institutions such as the family and religion. The fruits of the market system—science, technology, urbanization, affluence—are undermining these institutions, which were the foundation of the social order. Human beings need more than an abundance of material goods. They need a sense of purpose in life—secure relationships with other human beings—something or someone to believe in. With the decline of the family and of religion, the inability of the market system to meet such needs becomes obvious, and the state rushes in to fill the vacuum. But it does so imperfectly because it is so large and so impersonal.

The affluence and complexity of modern life also contribute to the pressure for more equality, and the government is now the chief institution for undertaking redistributive functions. This is not to suggest that the pressure for equality is always met quickly and fully. On the contrary, much legislation is designed to give symbolic recognition of the ideal of equality, but does not involve significant redistribution. This is not necessarily to be condemned; a preoccupation with equality and the neglect of other goals can be socially harmful. It is useful to recall Lord Acton's comment on the French Revolution: "The finest opportunity ever given to the world was thrown away because the passion for equality made vain the hope of freedom."

For all its weakness, the family is probably still the greatest single barrier to equality in post-industrial society. As long as mothers and fathers pass on to their offspring their own particular genetic endowment and their own special heritage and values, attempts to achieve complete equality will be frustrated. At some point we shall have to ask whether that last increment of equality is worth the loss of so valuable an institution as the family—one that can stand as a refuge from impersonal markets and authoritarian government.

Government also grows because the majority frequently sees no feasible alternative for dealing with the complexity and interdependence of modern life. The point which I think needs emphasis is that the cumulative impact of the growth of government is to weaken (and ultimately destroy) other useful institutions such as the market, the family, and private associations of a religious, fraternal, and

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philanthropic character. Thus, we should be wary of the constant expansion of government, and especially centralized government, not only because any particular proposed expansion is "inefficient"—it may well pass a comprehensive cost-benefit test for a majority of the population—*but because there are other goals besides efficiency.*

For me the key word is *balance,* both in the goals that we set and in the institutions that we nourish in order to pursue these goals. I value freedom *and* justice *and* efficiency, and economics tells me that I may have to give up a little of one goal to insure the partial achievement of others. Moreover, I believe the best way to seek multiple goals is through a multiplicity of institutions—the market, government, the family, and others. No single institution is superior for all goals. And diversification—be it of institutions, genes, or security holdings—is the best assurance of stability and survival in the face of an uncertain future.

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Campaign financing and the "special interests"

MICHAEL J. MALBIN

CAMPAIGN finance is one of those rapidly changing practical fields in which generalizations mislead more often than they help. In my years of following the subject, however, I think I have managed to find one useful rule of thumb. Whenever everyone seems to agree on anything, one should become suspicious.

Typically, the most frequently written campaign-finance stories of the 1978 elections were also the least accurate: those portraying special-interest "political-action committees," or PAC's, as a new sinister force on the verge of controlling Congressional politics. PAC's surely have become more important over the past few years. But the PAC's, and the connection between their gifts and Congressional policy, are a good deal less significant than we have been led to believe. Moreover, the ongoing effort in Congress to change the law is fueled by a similar misunderstanding of PAC's and their consequences. To be sure, the campaign-finance law needs changing, but no change can be discussed intelligently until we first clear away the debris that now leads Congress to focus on the wrong "problem." What Congress should be considering are the more basic difficulties besetting our representative institutions. PAC's are only a small part of these, and if Congress persists in reacting only to PAC growth it

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may unintentionally strengthen other forces in ways that will haunt us in the future. There may well be an argument to be made on behalf of some form of public campaign financing, but the arguments now being made, and the bills presently being considered, react to a minor phenomenon while ignoring major threats Congress unwittingly has been helping.

The 1970's campaign-reform laws

The basic facts upsetting Congress are by now well known. The Federal Election Campaign Act of 1971 for the first time required all Federal candidates to disclose their campaign contributions and expenditures. The act repealed an ineffective $5,000 limit on campaign contributions that passed in 1939, which candidates had promptly circumvented by creating innumerable campaign committees, each of which could receive $5,000 from the same well-heeled contributor. The reformers of 1971 saw disclosure as the least intrusive way of limiting the ability of special interests to use campaign contributions as levers for influencing public policy. Unfortunately, the reformers never had a chance to test their theory. The new disclosure rules were not implemented until halfway through the 1972 election campaign, by which time Richard Nixon and other incumbents running that year had raised most of their big money. Then came Watergate. The break-in at the Democratic National Committee had nothing to do with campaign finance, of course, but other abuses of the Nixon years did. And all of them —the host of illegal corporate contributions, alleged bribes, and favors for large contributors—either were illegal under the laws then in effect, or would have been open to timely exposure had the campaign been covered from beginning to end by the 1971 law.

But arguments defending the 1971 law fell on deaf Congressional ears as the Nixon Administration scandals were uncovered during 1973 and 1974. The Congress that forced a President to resign was not about to face the voters without a credible "reform" package that could be sold as an "answer" to Watergate. Campaign reform had a significant cadre of supporters before 1973, of course, but the public-relations needs created by Watergate changed the cadre into an unstoppable majority. After a few technical changes designed to make sure the "reform" strengthened incumbents, Congress passed a sweeping law drafted by Common Cause that:

1) limited the amount of money contributors could give Federal candidates;

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2) limited "independent expenditures," that is, the amount individuals could spend by themselves in support of or in opposition to a candidate, even though the money is not technically contributed to a candidate;

3) limited the amount candidates and their families could contribute to their own campaigns;

4) set up a Federal "matching-grant" system for Presidential primary candidates for contributions up to $250;

5) provided a flat Federal grant for Presidential candidates in the general elections which, except for a limited amount to be spent by national-party committees, was meant to be all that the major-party candidates were to spend on their campaigns; and

6) limited the amount any Federal candidate or Federal candidate's campaign committee could spend in an election campaign.

The package, the reformers said at the time, would effectively eliminate private money from the Presidential general election, equalize the power of small and large givers, and reduce the role of the "special interests." Once again, however, the law was never implemented through a whole election cycle. In January 1976 the Supreme Court ruled in *Buckley v. Valeo* that the limits on campaign expenditures by a candidate, on contributions by a candidate to his own campaign, and on independent expenditures, were all unconstitutional abridgments of the candidate's or independent spender's rights of free speech. Expenditure limits imposed as a condition for accepting a Federal grant were upheld pending concrete campaign experience, but these are being challenged now in a suit brought by the Republican National Committee. The disclosure provisions also may have to be modified in light of their impact on unpopular minor parties and ideological issue groups. In fact, about the only major sections apparently likely to survive constitutional scrutiny intact are the ones limiting campaign contributions. These are the sections that relate most directly to the role of PAC's.

The 1974 law placed a $1,000 limit on the amount individuals could contribute to a candidate in a Federal election and a $5,000 ceiling on contributions from registered multi-candidate non-party political committees. (Primaries and general elections count as separate elections under the law, doubling the effective limit for most Federal candidates.)

The contribution limits for national-party committees are significantly higher and, unlike the limits for individuals and non-party committees, they are adjusted for inflation. House candidates may receive $5,000 per election from the House Democratic or Republi-

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can Congressional-campaign committees and another $5,000 per election from the national-party committees. In addition, the national-party committees are allowed to spend up to $10,000 per year, in coordination with the state-party committees, on behalf of House candidates. Senate candidates may receive $17,500 per year in direct contributions from the party and the party may spend the equivalent of two cents per year for each voting-age member of the population on behalf of a candidate—about $300,000 in the larger states. The same two-cent expenditure limit in the Presidential general election allowed the parties to spend about $2.4 million on behalf of Gerald Ford and Jimmy Carter in 1976 and will let them exceed $3 million in 1980, when the figures are adjusted for inflation. These contribution limits were deliberately designed to give national parties a greater role in the election process than the very limited one they had in the recent past. So far they have been working out as expected, at least for the Republican Party.

The limits on PAC's, however, have not worked as the reformers had hoped. They reasoned that by setting the limit on contributions by PAC's at but five times the limit for individuals—and not providing for an inflation adjustment—the multicandidate committees would slowly decline in importance. The strategy was thwarted, however, by another change wrought by the 1974 law.

PAC growth since 1974

Federal law for a long time has prohibited corporations and labor unions from contributing money directly to candidates for Federal office. But they were able to set up independent political-action committees to channel voluntary contributions. Labor took full advantage of this opportunity, but until 1974 corporations did not. Although the law permitted corporations to form PAC's, it prohibited Federal contractors from doing so—and most large corporations either were Federal contractors or wanted to be.

This does not mean, of course, that corporations abstained from politics before 1974. Executives were "encouraged" to contribute specific percentages of their salaries to political candidates. Some corporations used a tactic called "double envelopes," collecting several executives' individual contributions and delivering them to the candidates in a single outer envelope with the corporation's return address. Corporate funds were passed off illegally as individual contributions. Airplanes, photocopying, and other in-kind services were made available to candidates. All in all, the corporations were active,

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but the activity had a disturbing and faintly—or not so faintly—illegitimate air about it.

Faced with this widespread duplicity, Congress decided in 1974 that it preferred open political participation of corporations through PAC's to the covert participation in which most were then engaged. It decided to remove the ban on Federal-contractor PAC's. (Berkeley political scientist Edwin M. Epstein has noted that Congress was thinking of more than just business when it did this: Labor unions had been getting some Federal contracts and were nervous about the potential application of the ban to their own political-contribution committees.)

The removal of the contractor ban had a dramatic impact. On December 31, 1974, there were 89 corporate PAC's, 201 labor, and 318 "others." In 1974, as in earlier years, most of the money from the business sector came from individual contributions, not from corporate PAC's. Indeed, most of the money from business *organizations* came from the 318 "other" PAC's, which included a substantial number of trade associations as well as the better-known medical, ideological, single-issue, and other miscellaneous groups. Of the $12.5 million in PAC money given to Federal candidates in 1974, $6.2 million came from labor, $2.5 million from corporation and association PAC's, $1.5 million from the American Medical Association, and about $2.3 million from all others combined.

By the end of 1976 the number of corporate PAC's had gone up from 89 to 433, while labor committees increased only from 201 to 224. The $7.1 million that corporate and business trade associations gave to Federal candidates in 1976 came close tripling their 1974 total, but still fell short of the $8.2 million given by organized labor. (The American Medical Association gave $1.8 million in 1976, milk cooperatives gave $1.4 million, and the combined PAC total was $22.6 million.)

The numbers went up again in 1978. This time, 646 corporate PAC's contributed $8.8 million to Federal candidates, thus almost matching the $9.4 million that 198 labor organizations gave—and that is without even taking into account trade associations. Separate figures for business trade associations are not yet available for 1978, but Epstein estimates the total reached at least $6 million. A total of 1,360 political-action committees were active on the Federal level in 1978, contributing a total of $32 million. When compared to the $12.5 million and $22.6 million PAC totals from the elections of 1974 and 1976, there can be no question that this is the fastest-growing portion of the Congressional-election budget.

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Nor is the end in sight. Epstein noted in *Regulation* magazine that most companies in the *Fortune* "double-500" do not yet have PAC's. The most recent figures show 72 of the first 100 on *Fortune's* list with PAC's, but only 140 of the next 400, and a mere 42 of the second 500. No wonder business's political consultants see this as a growth industry and labor officials have called the trend "terrifying."

The other half of the story

PAC's are but a small part of the campaign-finance story—though the part that gets all the publicity. They are indeed contributing more money to campaigns than they used to, and that trend is likely to continue. But the other half of the story—the unpublicized half—reveals a trend that is at least as important. *PAC's may have given 50 percent more to Congressional candidates in 1978 than in 1976, but so did everyone else. PAC's, therefore, were responsible for about the same percentage of all Congressional-campaign contributions in 1978 as in 1976.* They were proportionately more important in 1976 than in 1974, but that fact simply reflected a change in the style of business giving because of the new law.

Table I shows where general-election candidates got the money for their primary and general-election campaigns in 1976 and 1978. As it illustrates, candidates were raising money in 1978 from the same places, and in roughly the same proportions, as they were in 1976. As in 1976, more than half of the money raised for House can-

TABLE I. *Fund Sources, House and Senate General-Election Candidates, 1976 and 1978*[1]

	AMOUNT RAISED ($ MILL.)	FROM INDIVI. CONTRI. $0-$100	FROM INDIVI. CONTRI. $101-$499	FROM INDIVI. CONTRI. $500+	FROM NON-PARTY PAC's	FROM PARTIES	FROM CANDIDATES GIFTS OR LOANS TO SELF.	FROM OTHER LOANS
HOUSE								
1976	65.7	36%	12%	11%	22%	8%	10%	1%
1978(est)[2]	92.8	34	10	13	26	7	8	2
SENATE								
1976	39.1	28%	13%	27%	15%	4%	12%	0%
1978(est)[2]	63.8	33	11	25	14	7	8	3

[1] Source: Federal Election Commission press release.
[2] Final 1978 figures not available at time of printing. Breakdown after October 23, 1978 estimated from a sampling of individual FEC filings.

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didates and almost two-thirds of the Senate money came from individuals, with small contributors leading the way. PAC's were slightly more important for House candidates in 1978 than in 1976 and significantly more important for them in both years than they were for Senate candidates. Conversely, large individual contributions (over $500) were more important to the Senate than to the House. Parties became significantly more important for the Senate than they were in 1976, although they still played a somewhat smaller role in Senate than in House elections.

The real story that emerges from the data in Table I, however, is not about changes within categories but rather about the remarkable consistency of the changes. What happened between 1976 and 1978 was not that any one source of funds became more important, but that campaigns became more expensive. House candidates who made it to the general election raised 41 percent more in 1978 than in 1976, while the Senate general-election candidates raised an amazing 63 percent more in 1978 than two years earlier. The average House general-election candidate, Democratic or Republican, spent over $107,000 in 1978, and more than 80 candidates spent in excess of $200,000. Senate general-election candidates spent an average of $731,000 if they were Democrats and $1.1 million if Republicans. A contested Senate election cost each Senate general-election candidate on average more than $900,000 in 1978 and less than $600,000 in 1976.

Inflation, public financing, and incumbents

The Congressional response to this inflation has been a call for public financing coupled with expenditure limits—a method similar to the matching-grant system used for Presidential primaries. Matching grants, by themselves, would increase the total amount of money available to candidates while adding some weight to gifts from small contributors. Unlike a voucher system—which would pump even more money into campaigns while, for the first time, financially enfranchising the poor—matching grants would do little to affect the overall balance of political power. And, unlike an in-kind grant for political literature—such as free postage or a state-published booklet containing statements by the candidates—they would do nothing to change the focus of campaigns. Thus, matching grants might help alleviate the burden of rising campaign costs without changing the content or style of politics, *provided* they can be drawn up in a manner that is sensitive to the very different needs of different Con-

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gressional districts, with different media markets, primary dates, and the like.

Expenditure limits would be another matter. Most people who support matching grants really do so because they see them as a way of constitutionally limiting campaign spending. The problem with this is that expenditure limits favor incumbents, no matter how high they are set. The specific limit being considered in the House this year is $195,000 for the general-election campaign. That is significantly more than the 19 challengers who defeated incumbents in 1978 spent on their general elections. (They spent an average of $153,000 in the general elections and $203,000 overall, to the defeated incumbents' overall average of $181,000.) On the surface, therefore, the limits might seem workable. But we should remember that the successful challengers *averaged* $153,000. Many needed a good deal more than that, and many of those who got by with less were running against candidates who had been weakened by scandal.

The argument against spending limits, however, does not finally depend on the specific limit proposed. As Gary Jacobson, a Trinity College political scientist and one of the nation's leading students of Congressional-campaign financing, has pointed out:

> Any reform measures which decreased spending by the candidates will favor incumbents. This includes limits on campaign contributions from individuals and groups as well as ceilings on total spending by the candidates. Even though incumbents raise money more easily from all sources, limits on contributions will not help challengers because the problem is not equalizing spending between candidates but rather simply getting more money to challengers so that they can mount competitive races. Ceilings on permissible spending, if they have any effect at all, can only lessen competition.

Jacobson's findings clarify the question we should be asking when we think about spending limits. *What poses a greater threat to our representative institutions, the high cost of campaigning or the entrenched power of incumbency?* As the situation stands now, the staff and perquisites available to incumbents make them *almost* unbeatable, except by someone who can spend a lot of money on the effort. Is the amount spent by challengers too much? *The cost of campaigns now comes to less than the nation's advertising budget for soap, while the cost of running the Federal government exceeds one-fifth of the gross national product. In light of this, how can anyone seriously claim that the cost of keeping the incumbents on their toes is too high?*

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PAC contributions

While PAC contributions have not been increasing as a percentage of the total campaign pie, they have been changing in other politically important ways. Xandra Kayden, who has been studying PAC's at the Hoover Institution in Stanford, has described business participation in electoral politics as largely "passive"—meaning that corporations generally react to requests for funds rather than seeking out candidates to help, favoring incumbents and getting little in return for their favor. This description was a lot less true in 1978 than it has been in the past.

One way to tell this is to look at the giving patterns of organizations with similar interests. In past years, corporations and business trade associations have tended to dissipate their political influence by giving small amounts to large numbers of people, while labor, ideological groups, and other associations concentrated their gifts in larger packages. This difference between corporate PAC's and others probably never will disappear entirely because corporate interests simply *are* more diverse than those of other politically active organizations. But the gap is becoming smaller, as corporations are learning to concentrate on races in which their efforts might make a difference.

Thanks to the Federal Election Commission's new computer programs and its helpful Public Records Office staff, we are able for the first time to learn about the aggregate giving patterns of large numbers of organizations, selected and joined together in whatever pattern a researcher chooses. In Table II, the combined contributions of the 72 largest corporate and trade-association PAC's (those with receipts of $30,000 or more by June 30, 1978) are compared to the combined contributions of the 43 largest labor PAC's (receipts of $50,000 or more as of June 30), 15 conservative and 7 liberal ideological PAC's, and Democratic and Republican party committees. Thus we are able to compare the groups to each other, and also to see if the combined weight of any one group of PAC's was so great as to give it dominant power in the races it entered.

As Table II shows, the 72 largest business PAC's, by October 23, 1978, had given 48 Senate general-election candidates an average of $38,220, and 328 House candidates an average of $13,292—hardly enough to "dominate" anything. Business was on both sides of 15 Senate races. Only two candidates (John Tower, $101,817, and Robert Griffin, $107,845) received more than $100,000 from the 72 groups combined, and in neither case did the figure represent a particularly high percentage of their total spending. (Griffin spent

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TABLE II. *Comparative PAC and Party Contributions**

PAC's	SENATE		HOUSE	
	No. of Candi. Receiving Contribu.	Avg. Comb. Contri.	No. of Candi. Receiving Contribu.	Avg. Comb. Contri.
72 Business PAC's	48	$38,200	328	$13,292
43 Labor PAC's	36	$52,036	295	$19,015
15 Conservative PAC's	17	$16,772	97	$11,771
7 Liberal PAC's	19	$ 6,771	121	$ 1,737
Republican Party	30	$87,596	284	$12,244
Democratic Party	33	$13,398	329	$ 2,774

* Source: Federal Election Commission computer data.

$1.5 million before losing to Senator Carl Levin, while Tower's narrow victory over Bob Krueger cost him more than $4 million.)

As was true in the past, labor's campaign contributions were concentrated more narrowly than those of business. The top 43 labor committees (those with receipts above $50,000 as of June 30) had by October 23 given an average of $52,036 to 36 Senate general-election candidates and a $19,015 average to 295 candidates for the House. Labor was on both sides of only four Senate races and gave more than $100,000 to six Senate candidates (Wendell Anderson, $126,600; Bill Bradley, $113,470; Dick Clark, $129,000; Floyd Haskell, $123,200; William Hathaway, $101,400; and Carl Levin, $124,095). As with business, the biggest gifts went primarily to people with difficult races. (Bradley was the only exception.)

The top conservative ideological PAC's, by concentrating their resources even more narrowly, were able in 1978 to become almost as important a factor in the House races they entered as either business or labor. The conservative PAC's gave seventeen Senate general-election candidates an average of $16,772 and gave an average of $16,702 to another six who were defeated in primaries. (Their willingness to enter the primaries early and heavily distinguishes the ideological PAC's from the economic ones.) More significantly, the conservative PAC's gave 97 House candidates an average of $11,771 —a figure rivaling that of the 72 business PAC's and constituting almost two-thirds that of labor. The seven large liberal PAC's, in contrast, gave an average of $6,771 to 19 Senate candidates and an average of only $1,737 to 121 candidates for the House.

There was a similar imbalance between the two major parties. The Democratic Party spent on behalf of, or gave outright to, 33 Senate candidates an average of $13,398, and an average of another

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$2,794 to 329 candidates for the House. The comparable Republican Party figures are averages of $87,596 for 30 Senate general-election candidates, $18,081 for 10 other Senate candidates, and $12,244 for 284 candidates for the House.

Information about the type of candidate receiving these gifts from business, labor, and ideological PAC's will fill out the picture of the role the groups played in 1978. According to figures released by the FEC (presented in Table III), labor, corporations, and associations each gave about 61 or 62 percent of their total funds to incumbents, with the remaining 38 or 39 percent divided fairly evenly between challengers and people running for open seats. In contrast, PAC's listing "no connected organization"—an FEC grouping that includes most of the ideological PAC's—gave 41 percent of their funds to challengers, 27 percent to people running for open seats, and only 32 percent to incumbents. Cooperatives, including the three big dairy groups, gave 75 percent to incumbents, dividing the rest evenly between challengers and open seats.

Looking at the contributions from a partisan perspective, we see that labor gave 95 percent of its money to Democrats, associations gave 56 percent to Republicans, groups listing "no connected organization" gave 73 percent to Republicans, cooperatives' donations were 75 percent Democratic, and corporations' were 61 percent Republican. (Corporations divided their money about evenly between Democrats and Republicans through September 30, but shifted to favor the GOP by a 70/30 margin in October, as challengers with a chance and close open-seat races became identified.)

These figures put a new pattern on the complaints about the supposed dominance of PAC's. We have already seen that PAC's were no more dominant in 1978 than they were in 1976. What has hap-

TABLE III. *PAC Contributions in 1978 by Type of Organization and Recipient*[1]

	Contributions to			Contributions to	
PAC's	Incumbents	Challengers	Open Seats	Democrats	Republicans
Labor	61%	21%	18%	95%	5%
Corporations	61	21	18	39	61
Associations[2]	62	18	21	44	56
No Connected Organization	32	41	27	27	73
Cooperatives	75	12	13	75	25

[1] Source: Federal Election Commission press release.
[2] Figures do not total 100% because of rounding.

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pened, however, is that the PAC's on the conservative side of the spectrum, broadly defined, are giving more than their ideological rivals. In past years, Republican business money from individuals roughly balanced what labor gave Democrats, while the bias of associations and dairy cooperatives toward incumbents kept Members in both parties happy. This year, several organizational developments have upset the old cozy arrangement. The conservative PAC's and the Republican Party's direct-mail solicitations have taken off and the corporations have refused to be as passive as the business associations to which Members were accustomed.

Congressional Democrats, supported by organized labor, tried to respond to the situation in mid-1978 by lowering PAC and party contribution limits. The approach could hurt national Republican organizations. If labor's aim is to make the GOP even more a captive of the New Right, it will succeed. But lowering the contribution limits would not affect *private* groups in a way most Democrats would like. In 1978, the 17 PAC's of *Fortune's* top 25 companies donated an average sum per candidate that ranged only from $139 for Mobil Oil to $773 for Amoco. The overall average contribution from these 17 companies—which together accounted for about 10 percent of all corporate PAC money in 1978—was all of $505! *The lesson of the numbers is clear: Reducing the contribution limits would not hurt the corporate PAC's at all. The organizations that would be hurt would be labor unions and the incumbent-leaning associations, both of which give larger contributions than the corporate PAC's. Moreover, a reduction in the limits probably would not hurt the ideological PAC's, for they would most likely respond by increasing their constitutionally protected "independent expenditures," which so far only they, the American Medical Association, and a few other highly organized groups have exploited.* In other words, Congressional Democrats and their allies in organized labor would do a lot more to help themselves if they built up the Democratic Party's fundraising instead of trying to cut down their opponents.

Those so-called "special interests"

The concern over corporate PAC's has been based partly on partisan considerations, and partly on outdated Progressive rhetoric which identifies all private organizations as "special-interest groups" and all campaign contributions as an effort to gain special favors. The rhetoric had some connection with reality when applied to trade associations, but it never was an accurate description of labor's rea-

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sons for participating in politics and it is increasingly less accurate for corporate PAC's. (It is an act of intellectual perversity to use the term "special interest" for ideological or single-issue groups—for they seek greater representation of their *opinions*, not their interests —but Common Cause uses it anyway.)

The limitations of the "special interest" label become apparent if we look at the differences between corporate and trade-association PAC's. In past years, most associations and many corporations were defensive givers. Concerned more with gaining access to an office holder than winning elections, these groups would give early money to incumbents, concentrating on key members of committees with jurisdiction over their issues, and late money to open-seat candidates who looked like winners. (People who won close elections were taken care of after Election Day.) Although many associations and a few corporations still practice defensive politics of this sort, the fact is that corporations and associations are beginning to diverge in politically significant ways.

The banking industry provides a clear example of the differences between associations and large corporations. The 17 largest corporate PAC's owned by banks gave only 19 percent of the $79,074 they distributed to House candidates to 22 members of the Committee on Banking, Finance, and Urban Affairs. Similarly, the PAC's of 15 state banking associations gave only 23 percent of their $71,175 in House contributions to 13 committee members. In contrast, the 11 PAC's of national banking and savings associations gave 48 percent of their $399,685 to 38 members of the committee.

The numbers are even more dramatic if we look at some key members of the committee. Henry Reuss, the chairman of the full committee, received $100 from the banks, nothing from the state associations, and $10,250 from the national associations. Fernand St Germain, chairman of the Subcommittee on Financial Institutions, got nothing from the banks or state associations and $12,650 from the national associations. John Rousselot, the subcommittee's ranking minority member, got $200 from the banks, nothing from the state associations, and $5,750 from the national associations. Stephen Neal, chairman of the Subcommittee on International Trade and Monetary Policy, got $100 from the banks, nothing from the state associations, and $3,200 from national associations. Les AuCoin, the subcommittee's ranking Democrat behind Neal, received $1,050 from banks, $975 from state associations, and $10,100 from the national associations.

The reason for these figures is no mystery. National associations

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tend to be headquartered in Washington, where lobbyists and PAC staffs work closely together. Corporations, even large ones with Washington offices, tend to make their campaign decisions somewhere else—either in the corporate headquarters or in individual plants. The result is that corporate politics are both more localized and more diverse than the politics of associations.

The classic "special interest" contribution is one designed to "buy" access to, or respond to a request from, a person who deals with a policy of specific importance to the giver. The gifts, in their classic form, go primarily to incumbents, regardless of party, who dominate key junctions in the legislative process. The national banking associations pursued their special interests in this manner in 1978. The banks clearly were pursuing something broader.

This distinction between the special interests of trade associations and the broader political purposes of corporations shows up again if we look at some candidates receiving high proportions of their money from PAC's. House committee chairmen got more than half of their money from PAC's—about double the percentage received by the average House general-election candidate. All but two or three of the chairmen were shoo-ins for re-election. Not surprisingly, most of their PAC money came from labor and from trade associations, with some corporate help thrown in for extra measure.

A somewhat different picture of business's role emerges if we look at the 19 House districts in which the incumbents lost. In those races, the incumbents received almost 44 percent of their average receipts of $181,157 from non-party PAC's, while the challengers got 28 percent of their $203,396 average from the PAC's. (The average challenger received 16 percent of his money from PAC's.) In all cases, the PAC money came from all over the country. In general, labor backed the Democrats in these races, and corporations backed the Republicans. The associations had less clear-cut party loyalties, supporting the Republicans when they were the incumbents and dividing when the incumbents were Democrats.

This confirms what we have been saying. Associations behave defensively, labor acts as a hybrid collection of special-interest/general-interest groups, and corporations are beginning to behave more like labor and less like the associations. One further example helps make the point: A recent *National Journal* analysis showed that the Eaton Corporation gave half of its money in 1978 to candidates who lost the election. That obviously is not the behavior of an organization worried solely about buying access or protecting itself.

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Some labor-business parallels

It would be misleading, however, to leave the impression that business and labor behave as if they were purely ideological associations. They are primarily economic organizations and, on the whole, behave accordingly. *The real distinction in the business and labor communities appears to be between unions and corporations with economic interests concentrated in one industry versus unions and corporations with broader, more diverse economic interests.* The latter group—including most of the PAC's formed since 1974 by the government contractors—seems to be using their contributions more to help people who are broadly "pro-business" than to influence any specific policy relating to a particular line of business. It is the former group of single-industry corporations and labor unions that behave most like special-interest associations. These are the PAC's whose gifts can be tied most clearly to their intended policy results and who, therefore, are the most likely sources for any legitimate concern over the supposed "conflicts of interest" produced by "special interest" campaign contributions.

Earlier, we noted that when contributions from the 72 largest business and association PAC's were added together, the combined "business" PAC total did not make up a sufficiently high percentage of most candidates' receipts to give reason for concern that the candidates were in some way "bought" by PAC contributions. The difficulties of connecting PAC campaign contributions to legislative behavior becomes even more pronounced when we focus on the single-industry labor and association PAC's.

For example, railway labor unions gave to every Democratic member of the House Commerce Committee—which has jurisdiction over railroad regulation—except two Representatives from Southern right-to-work states. Railroad companies also concentrated on the Commerce Committee, giving something to almost every member of the committee, but saving the big gifts for committee Democrats. On the face of it, therefore, the railway industry and union groups seemed to be engaged in straightforward "special interest" activity. Yet their resources were scarcely sufficient to "buy" votes on legislation, if the votes indeed were there to be bought. The biggest recipient of railway PAC gifts by far was Fred Rooney, the chairman of the Transportation subcommittee. Yet, Rooney's $8,000 from railroads and $5,700 from railway groups made up scarcely more than 10 percent of the total money he raised in his losing race against Don Ritter.

Following the railway-labor pattern, maritime unions gave heavily

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to members of the Merchant Marine Committee. Sixteen percent of the $748,060 distributed by the 14 largest of these unions as of October 23, 1978 ($119,093) went to 30 members of the committee and roughly according to who favored a "cargo-preference" bill backed by the unions. Again, however, the gifts were not particularly large. Only four members of the committee received a total of $8,000 or more from the 14 organizations: committee chairman John Murphy ($13,500 or 6.7 percent of his total receipts), Les AuCoin ($11,000 or 4.4 percent), Joshua Eilberg ($8,400 or 5.6 percent), and one Republican, Gene Snyder ($8,000 or 5.5 percent). Maritime labor-and-industry contributions simply were not a major source of funds for any of the committee's members, except the chairman.

Murphy's itemized records show him receiving $35,350 from all (not just the major) maritime labor-and-industry PAC's, $33,500 from other unions supporting cargo preference, $13,150 from individuals who work in the industry, and $7,000 from people identified as Washington, D.C., lawyers and consultants. If we assume half the money from D.C. lawyers and consultants came from maritime-industry lobbyists, that would bring his maritime labor-and-industry total up to $85,500 or more than 42 percent of his $202,599 in receipts.

Murphy's is an unusual case, however. Most Members of Congress are not nearly as dependent on any one industry or group of industries as he is. Similarly, most labor and corporate gifts are not focused in the manner of the trade associations, railway labor, and the maritime unions. On the whole, business and labor, like the ideological groups, give to people who share their broad views about public policy. Labor's threats to cut off people who voted "wrong" on right-to-work and construction-site picketing, for example, were carried through only half-heartedly. And corporations expect even less on specific issues. *In light of the record, it is hard to justify the notion that campaign gifts, particularly ones from the more broadly based labor, corporate, or ideological PAC's, are a special-interest group's downpayments for future special benefits. Some associations may think that way, but associations have become a decreasingly important part of business giving as corporate PAC's have grown.*

Contributions and public policy

One conclusion that seems to emerge from the data with surprising clarity is that very few members of Congress are really beholden

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to any one PAC or group of related PAC's for a significant portion of their campaign funds. Interestingly, the reverse side of this is also true. *Just as members do not depend on any one set of groups for significant portions of their campaign funds, neither do the most successful groups rely on contributions as the basis of anything more than a small part of their overall lobbying strategies.*

Campaign gifts must be examined from the two different perspectives of Congressional life: that of Washington, and that of the home district. Members are concerned about their reputations in both places, but to maintain and enhance their reputations they must do very different things in each. In Washington, a Member gains respect, and networks of deferential supplicants, because of the role he plays on specialized subjects of national scope. He tends to enjoy being liked, and more importantly respected, for this special role. The gifts he attracts from Washington-based organizations are accepted as signs of respect, and the amount of the gift is often of less importance than the ambiance of which it is a part.

This is not meant to deny that Washington-based interest groups affect Congressional policy in important ways, but rather to downplay the importance of campaign contributions within that Washington community. *If campaign contributions from Washington-based organizations were prohibited, the rest of what the Washington "issue networks" do would remain untouched. Relieved of the need to attend command-performance fundraisers, the networks would roll on as before, with more resources to put to other uses.*

The second perspective is that of the Congressional district. Here too, campaign gifts are only of indirect importance. *The Member's ultimate electoral objective in the district is to win votes. Campaign contributions help buy some of the things that in turn can be used to win votes, but votes—not dollars—are what the politician finally is after.* Gifts that produce bad publicity, for example, would be a political loss. So too, organizations with volunteer networks in the district are far more important than ones from outside that can supply nothing but money. And national organizations (such as the National Committee for an Effective Congress on the left, and any of three or four ideological organizations on the right) that provide candidates with technical services also tend to be more valuable to the candidate than those that only offer a direct money gift. Finally, organizations such as Environmental Action, with its "Dirty Dozen" list, and the right-to-life groups with their imitative "Deadly Dozen," can generate reams of front-page publicity in the district that may

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be worth as much as a candidate's entire public-relations budget. *In light of this, it is absurd to focus on any group of related PAC's that give a candidate 5 percent or so of his campaign funds as though the PAC's somehow had the power to make or break the Member in his district and thereby determine his vote in Washington.*

As with the Washington perspective, however, this observation is meant only to downplay the importance of special-interest campaign money, and not the much larger lobbying strategies of which the contributions are a small part. Two defeats suffered by organized labor in the last Congress ought to put this in perspective. Labor clearly outspent business in the 1976 Congressional elections and overwhelmed business in the Presidential election.[1] Yet, labor lost its two most important institutional votes in the 95th Congress: common-situs picketing and labor-law revision. Anyone who saw the excellent public-television film about House Speaker Thomas P. (Tip) O'Neill knows his explanation of what happened on common situs. Speaking to a representative of the Massachusetts Federation of Labor, O'Neill chided: "You lost it in the district." Said the labor representative: "I know." Construction associations had convinced contractors from districts with uncommitted Members to write and even come to Washington to persuade their Members that a bill allowing any one union striking a subcontractor to shut down a whole construction site could have disastrous economic consequences. Labor, relying on its Washington lobbyists, never countered this argument effectively. More to the point, the absence of grass-roots labor pressure confirmed an impression shared by many young Democrats that, except for its money, labor cannot deliver in the district, where it counts.

The same thing, magnified many times, happened in the Senate on labor-law revision. There, a Senate filibuster was supported by a grass-roots business-lobbying campaign estimated by people on both sides as having cost somewhere around $5 million. That was $5 million on one bill—compared to $9 million for all corporate PAC

[1] An article of mine in the March 19, 1977 *National Journal* estimated that labor spent approximately $11 million in the 1976 general election to aid President Carter, most of which was not disclosed. (Direct contributions to candidates were prohibited in this publicly financed campaign, of course.) The money was spent on communications with union members and their families and on supposedly non-partisan registration and get-out-the-vote drives that in fact were coordinated with the Carter-Mondale campaign. These expenditures are one basis for the Republican National Committee suit mentioned earlier. Business spent a mere $28,000 in the 1976 general election campaign on behalf of President Ford.

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contributions for the year! Moreover, the money was spent in a highly sophisticated way. The New Right used its mailing lists, as it had on the Panama Canal debate, to stimulate a massive letter-writing campaign. This was coordinated with a business lobbying effort that had Senate corridors flooded with executives, many from small businesses, who were flown in specifically to lobby against the bill. The executives and letter writers argued that the law would mean a loss of jobs in the Senators' home states. Labor was unable to counter business's *political* message. They failed to demonstrate that constituents "back home" were much concerned about labor laws. The key, once again, was grass-roots lobbying that had a credible connection with the voters.

What's really wrong with the campaign laws

The evidence about lobbying shows that Washington issue networks and single-issue grass-roots lobbying campaigns are more important to the contemporary lobbyist than campaign contributions. *The problem with the "reformed" campaign laws is that they work to reinforce these phenomena, whereas the law could act as a counterweight if it were less structured or structured differently.*

The primary reinforcement comes from the $1,000 limit on contributions from individuals. Contribution limits were enacted for understandable reasons. People became uncomfortable with the importance of people like Clement Stone, Robert Abplanalp, Stewart Mott, and Max Palevsky. But as understandable as the discomfort with large contributors may have been, the limits appear to be exacerbating a more serious disease than the one they were meant to cure. National candidates used to be able to raise large sums of money on quick trips to New York and California. Local and statewide candidates usually could do proportionally as well in selected areas within their districts. Now a candidate who is not wealthy and wants to raise a lot of money has only three ways to do it: by tapping the Washington issue networks, by spending huge blocks of time—much more than ever used to be spent at fundraising—at upper-middle-class cocktail parties, or by delegating work to professional fundraising specialists, many of whom rely on direct mail.

Every one of these fundraising methods has serious drawbacks. The Washington networks may not depend on campaign gifts for their power, but it seems unwise to structure the campaign laws in a way that forces candidates to go to them. Spending time with upper-middle-class voters is not in itself bad, but a candidate who

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spends too much time with any single class of voters is likely to end up with a distorted view of what the voters as a whole are thinking. *Finally, anything that makes nationwide direct-mail fundraising look tempting to a candidate cannot help but have harmful long-range effects on our politics, for it encourages those willing to play on the polarizing emotions that make direct mail work best.* These effects make the evils of the old system, such as the alleged "sales" of ambassadorships, seem mild by comparison.

Richard A. Viguerie is the wizard of direct-mail fundraising on the right. In an interview several years ago, Viguerie told me that direct-mail fundraising favors the politics of polarization. "People who take strong identifiable positions," Viguerie said, "have greater success because their people are committed and are willing to put up money. But somebody who tries to straddle the fence maybe doesn't offend too many people, but he doesn't turn any on." Viguerie turns people on to his candidates. He does more than that. He retains ownership of his mailing lists and continues turning people on with his publications, his appeals on behalf of issue groups, and his campaigns to stimulate grass-roots lobbying. What is usually thought of as a device to help candidates is turning into a year-round public-policy pressure machine.

The lesson of Viguerie's success has not been lost on others. Stanley Sheinbaum, frustrated by the contribution limits from underwriting liberal Democratic candidates, has been trying to help Richard Parker become the Viguerie of the left. Parker is the 32-year-old former publisher of *Mother Jones*, a radical-chic San Francisco-based periodical that used direct mail to build up a circulation of more than 200,000. Parker, in a recent interview, said that he explicitly intends to model himself on Viguerie. He said he is "worried" about the implications of his own activity for politics but does not "see any alternative" to it.

If we want the politics of the future to be dominated by a series of direct-mail specialists, each with his own cluster of polarizing issues, there is nothing more that we need to do. That is where the campaign laws are leading us. If, on the other hand, we do not want this, then we had better make sure that candidates have other ways of getting the resources they need.

The simplest way to counter the power of direct-mail specialists would be to do away with the contribution limits. Again, doing away with private financing would *not* work. The direct-mail people and other highly organized groups would then be in an even stronger position, since they would be among the few able to spend

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money to influence an election directly, using the "independent expenditures" protected by the Supreme Court in *Buckley v. Valeo.*

If doing away with the contribution limits seems too radical a step, then at least they could be raised. There is no justification for using the same limits for all levels of office. If a $1,000 limit makes sense for the House, then a $5,000 limit for the Senate and $50,000 for the Presidency would carry the same proportional weight. (Also, these limits should be indexed for inflation, which they are not now.)

If even this seems too radical, it would be worth bearing in mind that candidates who are not wealthy are most susceptible to the appeal of a direct-mail specialist at the start of a campaign, when the specialist can lend little-known candidates enough to get their direct mail started. Given the importance of seed money to little-known candidates, it seems worse than counterproductive to make them raise their first dollars under the same limits that apply throughout a campaign. It should not be too difficult to devise a scale of sliding limits that would allow candidates to get started with a few large gifts and then require them to raise the rest of their money in smaller amounts.

Disclosure is the main reason large gifts seem less troublesome now than they might have been in the past. But for disclosure to work, record-keeping and appraisal must be made simpler than it is now. Too many candidates have programmed their computers to spew out the names and addresses of all contributors, large and small, in the order in which they received the checks. In some cases, a single candidate's reports fill an entire file drawer, and in effect that is almost the equivalent of no disclosure at all. For disclosure to be useful, candidates should be asked to report less in a more meaningful form. I see no reason for listing each $101 contribution, for example. Raising the minimum to $250 would make things easier both for the candidate and for the person looking over the records.

A time for reflection

Finally, and most importantly, Congress ought to do some serious thinking about the basic purpose of campaign laws. Ultimately, this should have something to do with the purpose of campaigns. In turn, campaigns should be recognized as having something to do with the purpose of representation—of empowering some people to govern in the name of all, while leaving citizens satisfied with the process, even when their candidates lose.

Laws that favor a polarizing, negative politics run counter to these

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goals. The politics of the direct-mail specialists and the single-issue extremists must be allowed their freedom—they surely do add worthwhile material to the political debate. But it is suicidal to "reform" politics in a manner that systematically favors their tactics.

A well-designed set of campaign laws could help counterbalance these groups in a number of ways, such as by encouraging the parties to play a greater role in financing campaigns. Better campaign laws might never bring about the disciplined European-style parties some people (not I) desire, but at least they could set the parties up as a financial counterweight to the issue groups now in the ascendency. (The Republican Party is already part way toward achieving this goal. The Democratic Party should try to match the GOP, not react in fear by cutting its opposition down with legislation.)

Similarly, the campaign laws could be designed to counter the equally troublesome development of the technological politics favored by media and polling specialists. If we want to encourage a politics based on discussions of issues, public financing can help by *not* giving cash to the candidates—which they will just spend on more of the same of whatever they are doing. In-kind grants would be far more useful, particularly if they took the form either of free postage or the publication of booklets—such as those used in California, Oregon, and Massachusetts—in which candidates are given space for a written statement.

Yet these specific proposals are of less importance than the framework within which they are placed. Campaign-reform issues cannot be discussed intelligently unless they are seen in the context of the more general difficulties facing our representative institutions and processes. These difficulties, and not the shallow and essentially diversionary issues of PAC growth or campaign costs, are what ought to be at the center of public deliberation.

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Regulating business and the universities: one problem or two?

NATHAN GLAZER

THE history of the Federal government's regulation of business is much longer than that of its regulation of the universities and colleges. Until the middle 1960's or so, its purposes in regulating business were also very different from the purposes of government regulation of the academy: Government regulation of business was punitive in its origins; of colleges and universities, benign. And, until recently, the attitude of business toward government and its expansion has also shown marked differences from that of universities and colleges: Business has been suspicious; universities and colleges (at any rate, their faculties) have approved. Today, though many spokesmen of higher education (fewer spokesmen of business) still try to argue that the relations between government and higher education are simply going through some early growing pains, and that in the end all will be well, universities and colleges are increasingly finding that they, like business and industry, are in bed with an 800-pound gorilla and not a benign teddy bear.

It is an interesting story, one in which the curmudgeonly fears of politicians opposed in principle to government action, such as Senators Barry Goldwater and John G. Tower, are echoed 15 years later by the Presidents of Harvard and Yale, and others who are very

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far from the views of Senators Goldwater and Tower.[1] How did it all happen? And is the convergence of business's and higher education's cries of alarm more apparent than real?

Certainly government regulation of business, in its inception, had very different causes from government regulation of higher education. Government regulation of business began in a clearly adversary mode: Business had been guilty of actions against the national interest, and regulation was meant to prevent future abuses. The railroads would not be allowed to raise rates unconscionably, to give rebates to favored customers, and the like. Big business would not be allowed to combine in restraint of trade. The producers of food and drugs would have to hold to given standards so they do not poison their customers. Natural monopolies, or efficient monopolies —utilities, telephones—would be controlled in the public interest. The airlines would be controlled to provide efficient and reliable service at a reasonable cost. Business would not be allowed to use unfair practices to prevent its workers from organizing into trade unions, nor to shun collective bargaining. Business would not be allowed to exploit the public by selling worthless securities. And so for all these reasons we have the anti-trust acts, the Pure Food and Drug Act, and the regulatory efforts of the ICC, the FTC, the FCC, the CAB, the SEC, the NLRB, and so on. Admittedly, some of this regulation does not have a purely antagonistic origin, but exists to foster and protect some branch of industry. Political scientists also believe that even if this nurturant attitude was not part of the origins of business regulation, in time the close relations between regulated and regulator led to the "capture" of the regulatory agencies by those regulated, but recent developments raise doubts about how commonly this scenario was actually played out.[2]

[1] Senators Goldwater and Tower wrote in a minority report on the National Defense Education Act Amendment of 1961: "If adopted, the legislation will mark the inception of aid, supervision, and ultimately control of education in this country by Federal authorities." Fifteen years later, Kingman Brewster, then President of Yale, provided this controversy with its most eloquent image. "Use of the leverage of the government dollar to accomplish objectives which have nothing to do with the purposes for which the dollar is given has become dangerously fashionable. . . . It might be called the 'now that I have bought the button, I have a right to design the coat' approach." About the same time, Harvard President Derek Bok sounded similar concerns in his report for 1974-75.

[2] Paul H. Weaver, in "Regulation, Social Policy, and Class Conflict," *The Public Interest*, No. 50 (Winter 1978), and *Regulating Business: The Search for an Optimum* (San Francisco, Institute for Contemporary Studies, 1978), points out that regulatory agencies, if captured, did not always stay captured. Much of the nurturant attitude of regulatory agencies, if not called for in its founding legislation, seems to have arisen mainly as a result of the decline of the industry under regulation—such as railroads and shipbuilding.

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Nor has the newer social regulation been very different in its inception. The Equal Employment Opportunity Commission, OSHA, the EPA, and the Consumer Product Safety Commission are not considered particularly friendly to business and were established to control what were seen primarily as business abuses. Moreover, hardly anyone is claiming business has gotten very far in capturing *these* agencies.

The contrast with the regulation of higher education could not be sharper. The regulation of American higher education by the Federal government arises from what we would all consider entirely benign activities. The Federal involvement with higher education had nothing to do at the beginning with any sense on anyone's part that there were abuses to be controlled. Rather, higher education was seen as a good thing. It was valuable for personal advancement, and so access to higher education was considered a suitable reward to veterans. Thus we had the G.I. Bill and the payment of World War II veterans' tuition. Institutions of higher education could advance America's research capability and achievement. And so there was a second major government involvement: funding of research on American campuses. And it continued from there. Higher education was encouraged to provide the graduate scientists and specialists that the country needed to counter Russia's scientific achievements. It was used to maintain American preeminence in nuclear physics and in space research. It was to be supported with libraries and dormitories so as to permit it to expand and provide its benefits to more students. It was to be encouraged with grants to provide more doctors, dentists, nurses, city planners, school administrators, and whatever other specialized professionals seemed to be in short supply. It was to benefit from the assistance given on various grounds to students seeking higher education. And thus dependents of social security recipients, impoverished students in general, and, in time, almost all students joined veterans in receiving aid of some type for higher education.

But if business was seen as rapacious in its profit-seeking and requiring severe regulation, while higher education was thought benign and deserving of aid to assist national objectives, how did they both end up in the same boat? Yet that is not the only question. One may ask further: Does higher education possess certain characteristics important for our culture and society which make singularly inappropriate much of the regulation to which it is now subjected? Does the fastening of the same standards on business and education indicate some massive error which, properly pointed out,

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can be corrected, to the health of higher education and the society of which it is a part? These are some of the questions that this essay addresses.

Three roads to regulation

How did it happen that higher education came to be viewed by government regulators with something similar to the distance, suspicion, and hostility common in the regulation of business? There were three major routes to this final result.

First, real abuses developed as government contracted with higher education for services. Second, the explosion of social regulation did not, perhaps could not, make distinctions between profit-making and non-profit-making sectors of society. More than had been the case with earlier economic regulation specifically devoted to the abuses of a given industry or given practices, social regulation mixed higher education in with all others who were to be regulated as, for example, employers or contractors with government. Finally, over time, a real suspicion of and hostility toward higher educational institutions as such developed among some important opinion-making sectors. Higher education came to be seen as discriminatory, insensitive to new social demands, and elitist, and thus regulation moved from dealing with *some* specific abuses in higher education, and from unconsciously including higher education with other enterprises to be regulated, to an adversary stance. Higher education, like business, in the regulators' practice and orientation, was presumed guilty until proven otherwise.

Above and beyond these three specific routes to an adversary stance, was the simple operation of bureaucracy and regulation. They expand. The reasons for regulation's expansion beyond what is originally intended in legislation and in executive decree are numerous. Regulation expands because it must be orderly, and so the original fault that occasions intervention, whatever it may be, must lead to a general rule, and that leads to general supervision, whether one has committed the fault or not. Regulation expands because powerful interest groups put regulators under pressure. It expands, too, because the new availability of judicial forums in which to press demands for greater government regulation puts regulators under the pressure of courts. Regulation expands because Congress finds it easier to attack a specific problem in general terms than to prevent or correct the damage that occurs as its legislation is turned into rules—and expanded in scope—by regulators. To attack a fault (discrimination against minorities, women, and the handicapped,

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environmental degradation, abuse of human subjects) is a noble thing. To then go through the hard work of trying to contain the unintended consequences of eliminating the fault is a difficult thing, particularly when there are those who benefit from the unintended consequences. Thus the regulators are left to their own devices, under the threefold pressure of their own position as regulators, of special interests who wish to push them in one direction or another, and of the courts who may be enlisted by the special interests.

There were two abuses in particular that offered legitimate openings to correction by government. The first was discrimination on grounds of race, ethnic group, and sex. To say that higher education was guilty of such discrimination is not to accept the standard assumption seen in so much writing on higher education today that the guilt was still widespread in 1964, when the Civil Rights Act was passed, or in 1970 and 1971, as higher education fell under regulation for affirmative action. Higher education in the South had developed in a strictly segregated fashion, with 100-percent-black and 100-percent-white colleges and universities, public and private. Only blacks went to black colleges, only whites to white colleges. Whites taught in black colleges, but no blacks taught in white colleges. To what extent such discrimination was an issue in Northern and Western institutions in the later 1960's, whether in admission or employment, is a much-disputed question. It is my impression that there was little discrimination, that for large sectors—the major sectors—of higher education, the guilt of racial, ethnic, and religious discrimination had in large measure passed—though, admittedly, many such practices had ended only recently. It is now, however, taken as a given that higher education was massively guilty. Without settling this matter, we can agree it was certainly guilty in the South, where higher education had been overtly set up on racial lines.

One can raise similar questions as to guilt for sexual discrimination. Though I tend to consider exaggerated the view that higher education in the late 1960's was ridden with sexual discrimination—in admissions to undergraduate institutions and graduate programs, support for graduate students, and employment of faculty—there was undoubtedly some. And it had a very different character from racial or religious discrimination. It was often thought of, regardless of how we see it now, as simple common sense in accommodating women's interests and needs. But with the radical change in women's self-images and aspirations in the late 1960's and early 1970's it became offensive, and in 1972 Congress legislated specifically against

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sex discrimination in higher education. (Women were already protected against discrimination in employment by Title VII of the Civil Rights Act of 1964, and by the Executive Order requiring affirmative action by government contractors.)

It is not unimportant, however, to determine just how guilty higher education was—or is—and how we are to assess that guilt, because it is on the assumption of guilt that the adversary stance is taken up by regulators and, more significantly, by those who spur them into action to defend minorities and women. Guilt justifies closer supervision and control. Thus, if regulators believe it is a sign either of discrimination or insufficient action that gross *statistical* disparities exist between the proportion of minorities to whites or women to men enrolled in or employed by an institution of higher education and the proportions in the population, we will undoubtedly have more extensive and intrusive regulation—because such disparities do exist, and it is hard to see how they can ever fail to exist. The issue then becomes whether they are to be seen as resulting from discrimination on grounds of race, ethnicity, or sex as such, or from the application of a general standard.[3]

One hopes that the struggle against the naive and mistaken view that a statistical disparity is a sign of discrimination, or of discriminatory vestiges that require severe government action, is not wholly lost. But whatever scholars conclude regarding how much discrimination existed 10 years ago, or exists today, or how present statistical disparities are to be judged, there can be no doubt that it has been the interpretation of scholars that academic discrimination exists, or something closely akin to it—structural discrimination, or vestiges, or what one will—that is the principal basis for considering higher education guilty, and that provides the wedge for the kind of government regulation that is felt by higher education itself as most offensive.

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[3] Important as the issue is—just how much discrimination was there, or is there, in institutions of higher education, against women and minorities in admission, in employment, in promotion—it cannot be settled here. But for some of the argument that the gross statistical standards used to demonstrate discrimination do not apply see Nathan Glazer, *Affirmative Discrimination* (New York, Basic Books, 1976) Chapter 2; *Perspectives on Availability: A Symposium on Determining Protected Group Representation in Internal and External Labor Markets* (Washington, D.C., Equal Employment Advisory Council, 1977); Thomas Sowell, *American Ethnic Groups* (Washington, D.C., The Urban Institute, 1978). For sophisticated efforts to test to what degree there was discrimination in higher education, see Richard B. Freeman, *Black Elite* (New York, McGraw Hill, 1976); Thomas Sowell, "Affirmative Action Reconsidered," *The Public Interest*, No. 42 (Winter 1976) pp. 47-65; and, Sowell, "Affirmative Action Reconsidered: Was it Necessary in Academia?" (Washington, D.C., American Enterprise Institute, 1975).

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The abuses of academe

The second area of abuse widely recognized in the world of post-secondary education as having justified some degree of governmental regulation is exploitation of veterans and of other students who get government grants or loans for tuition and attend institutions at the fringes of higher education. I use "post-secondary education" here advisedly because the most serious problems were not in traditional institutions of higher education, but in the area of vocational education. The enormous variety of American post-secondary institutions does, of course, raise questions as to what is properly considered higher education. We are not blessed with a single national system, nor with institutions that are unambiguously universities and all of one kind, as are some countries. And yet even with our great diversity there is common recognition of what a college or university should "look like" or do. The enormous diversity of standards for student admission is matched by surprising homogeneity in other respects. All are broken down into courses, courses into departments and divisions, with regular meetings, test and grades, the accumulating of credits for certificate or degree, and the like. It is possible to accredit institutions, and private organizations have grown up to do so which consign the worst abuses (diploma on payment of fees, etc.) outside the circle of the accredited.

There were abuses in post-secondary education. As Chester E. Finn, Jr. writes in his excellent *Scholars, Dollars, and Bureaucrats*: "Among the principal offenders [of the G.I. Bill] were thousands of profit-making proprietary schools that sprang into existence, some of which were patronized exclusively by veterans and too many of which were found to be falsifying their records, overstating their charges, and generally abusing the Federal program." Matters became worse with the loan programs and the massive defaults of the 1970's. What was a legitimate institution? The Federal government was forced into the business of deciding. And the Veterans Administration was forced into the task of deciding what was legitimate academic work.

Yet in this as in the case of equal educational opportunity and affirmative action, limited abuses that could have been handled in limited ways became in the eyes of regulators a sign of potential universal guilt requiring sharp examination and correction. In the case of discrimination, this expansion was principally the result of pressure from minorities and women's groups demanding stricter enforcement; in the case of veterans, it was Congress's concern with the waste of government funds and the exploitation of veterans and

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other government-aided students. But in both cases, the forces of bureaucratic expansionism have led to the extension of the rules against abuse to the point where perfectly proper academic functions are being interfered with.

The protection of veterans against exploitation has led to rules which hamper innovation. And thus, for example, Wayne State University finds itself subject to the rules designed to control fly-by-night proprietary institutions. That university's president, Thomas N. Bonner, described his institution's plight in a letter to *The New York Times* on February 16 of this year:

> At Wayne State University we are waging a fierce struggle against arbitrary and mischievous intervention by the Veterans Administration in the content and programming of a fully accredited program for veterans enrolled in our Weekend College. The V.A. has insisted that veteran students must spend 12 hours in a standard classroom each calendar week in order to qualify for full-time benefits. No matter that the total number of instructional hours for a course remains the same, the V.A. demands that we conform in every case to an 1890 conception of classroom instruction if our veterans are to receive full benefits.
>
> The Wayne Weekend College has been accepted by national accreditation groups and by several university-wide faculty committees and has recently been commended by a UNESCO study group. Nevertheless, the V.A. continues to challenge in court the academic integrity of this and every other college and university by denying that its program constitutes full-time education in the traditional sense.

In other areas of education, extreme cases have led to necessary regulation—but, of course, regulation cannot limit itself to the extreme case. *All* Federally sponsored research requires controls to protect human subjects. The original intention was to protect human subjects who might be injected with drugs, or, as in the worst case reported in the press, who were not injected in order to research the effects of syphilis. Under the law of inevitable bureaucratic expansion, oversight by Federally required institutional review boards expanded from the kind of research in which subjects were injected with drugs—or not—or in which parts of their tissues were taken for examination, and where the possibilities of abuse were of course great, to cases where human subjects were given modest tests, or asked questions, or simply observed. From a procedure required only for research using Federal funds, the rules expanded to include all research taking place in a university. It now appears that research conducted by students as part of class work must also be monitored. Clearly, it has been not only widespread abuse that has led to expanded government regulation, but also occasional abuse combined

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with what seems an inevitable bureaucratic expansion of the scope of rules.

Another avenue to adversary relationships between regulators and regulated in higher education was opened when universities and colleges were covered by rules that were devised for industry and employers in general—for example, occupational-safety-and-health rules, or the Equal Pay Act. Sometimes rules devised for industry and full-time employment were inappropriate in educational settings. Universities and colleges might argue, for example, that there is a difference in the degree of risk associated with working under a certain condition 40 hours a week versus only a few hours' exposure a week. The objectives of health and safety rules (as of rules requiring equal employment, affirmative action, protection of veterans, controlling of Federal loans, grants, or research funds, or protecting human subjects) were never at issue. But there was considerable room for dispute on just how the new rules applied to higher education and how their heavy costs for reporting, for changing procedures, and for altering their physical plants, were to be met. Regulations designed for industry or employers generally, extended to colleges and universities by statute and regulation, and inevitably led to some degree of adversarial relations with regulators.

Finally, there were respects in which higher education, in its specific character *as* higher education, seemed to require regulation. Here the issue was not abuse, nor the fact that higher education was lumped in with other employers or with business enterprises. Rather, the very essence of higher education created antagonism.

Higher education typically picks and chooses among applicants to undergraduate programs and to specialized graduate programs; it picks and chooses among faculty, researchers, and administrators; distinguished institutions are awarded larger shares of research funds than would be possible under any formula emerging from the political process in Congress or from agency rulemaking. Higher education justified its admission, hiring, and promotion policies by pointing to standards that in many cases it refused to make explicit enough for regulators to police. But if it were to make its standards explicit and unambiguous, it wouldn't solve the problem, but rather make it worse from the point of view of regulators—who, for example, want to see more minorities admitted or employed. Those who attacked higher education for refusing to be more explicit in its standards were not quite honest: If the standards had indeed been more explicit, progress toward hiring minorities and women would have been even slower.

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Business and academe: how different?

The antagonistic relationship between regulators and higher education is by now fully developed. What one *does* about regulation is another matter. One might think that a great sense of commonality would have developed between business, laboring under its burden of rapidly increasing government regulation, and higher education, laboring under its. It hasn't happened, and there are good reasons why it hasn't. There are substantial differences between the mission and character of business and of higher education, and thus the burdens—and proper solutions—of excessive governmental regulation are seen quite differently in the two realms. Business is probably most afflicted by environmental regulation, which hampers expansion, mandates extremely heavy expenditures, and imposes varying relative burdens on different parts of the same industry. Perhaps occupational safety and health regulations pose similar difficulties. Affirmative action and equal opportunity are serious problems, but business and industry are aided in dealing with them by these facts: 1) They are hierarchically organized, and new procedures to come into compliance with given government rules are more easily instituted. 2) Since hierarchy is the expected organizational pattern, there is less occasion for rebellion in the ranks. 3) Business and industry are used to hiring by the numbers (tests) because so many enterprises are very large, and hire and promote many people for essentially similar tasks. While it may be offensive to managers to adjust the numbers so they reflect race, ethnicity, and sex, what is required is simply adjustment rather than totally new procedures.

Business is for the most part spared the entire complex of rules and regulations required by various types of aid to students in post-secondary education—determining who gets aid, reporting, monitoring, and the like. The increasingly complex requirements for the protection of human subjects in research are less of a problem for business than for universities, for government-funded research on human subjects is a very small part of business activity.

Whereas environmental-protection and occupational-safety-and-health regulation present the toughest problems for business, higher education—as indicated above—finds its most difficult regulatory problems in affirmative action and equal opportunity in employment, in the associated issue of autonomy in making decisions on admission, and in rules to protect human subjects in research. Since higher education is in any case not expanding and hardly polluting, the environmental issues are not severe for it. (Though Harvard Univer-

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sity, to its chagrin, found that one of the mechanisms for delay utilized by unsympathetic neighbors that eventually lost it the Kennedy Library, was the requirement for an environmental-impact statement.)

Higher education not only finds that Federal regulation affects it differently than business, but spokesmen for higher education have even argued it is *so* different that the burdens of regulation, which may quite properly be imposed on profit-oriented business and industry, should be eased or lifted entirely for higher education, because of its distinctive characteristics.

There have been two kinds of arguments for the position that higher education deserves different consideration when government regulates. The first is basically an economic argument: Because higher education is non-profit-making, and because of some of its special economic characteristics as an enterprise, it has special difficulties in dealing with the costs of government regulation.

The second argument is very different: It is that higher education, because of its functions of teaching, research, and preserving and extending a cultural and scientific heritage, stands apart from—and, yes, above—purely economic institutions, and for this reason must be exempted from many of the regulations imposed by government. The claim, in effect, is that higher education is something like a church. And the church is not only exempt from paying taxes, as is higher education, but may even get a special exemption from the government regulations that are most heavily invested with moral content, such as the prohibition of racial, ethnic, and national-origin discrimination. (This exemption for religious institutions is written into Title VII—the equal-employment title—of the Civil Rights Act of 1964.) Both arguments have some merit. Neither, I suspect, will in the end do much to differentiate higher education from business in the minds of Congressmen, the executive branch, or the bureaucracy. Let us consider whether they should.

The first argument is well presented in the first major study of the costs to higher education of government regulation, by Carol van Alstyne and Sharon L. Coldren. They studied the costs of implementing Federally mandated social programs for universities and colleges, and limited themselves to those costs that were imposed on universities and colleges in their capacities as business enterprises. They asked six institutions to estimate the costs of implementing programs regarding equal-employment opportunity, affirmative action, equal pay, age discrimination, occupational safety and health, environmental protection, fair wage and hour standards,

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contributions for unemployment compensation, social security taxes, retirement-benefit standards, and a few others. Some of these programs (such as social security and unemployment insurance) can be managed simply through bookkeeping. This may make them costly indeed, but they involve little in the way of *regulation.* The fact that institutions of higher education must contribute to the social security accounts of their employees, or must contribute for unemployment-insurance funds, imposes financial costs but in no way infringes on any distinctive function of a university or college. The affirmative-action requirements, of course, do go directly to the question of appointments of individuals and their qualifications, and thus are in a separate category. One might argue that occupational safety and health requirements designed for industry bear particularly harshly on teaching and research laboratories, and that requirements for modifying the physical characteristics of buildings to accommodate the handicapped (not covered in this early study) are particularly hard on colleges and universities. For they have characteristically grown up over many years, and were not designed with large, heavy elevators or on one level, as newer industrial and even commercial buildings have been for the convenient management of materials—which makes them also convenient for wheel chairs.

Coldren and van Alstyne examine universities and colleges as economic enterprises, and consider the distinctive economic impact of Federal regulations on them. They find, from this limited perspective, a special burden on institutions of higher education: 1) Colleges and universities are bound for a year by early announced tuition fees, which they cannot alter in response to higher costs imposed by government programs. 2) Because of tenure and long-range employment contracts, they have less opportunity to respond rapidly to increases in costs resulting from new Federal programs. 3) Since they are not as centralized as businesses—indeed they are highly decentralized—the costs of communicating the details of Federal requirements throughout the institution are greater. 4) While private profit-making business gets most of its income from selling at prices that can be varied somewhat according to costs, the equivalent in higher education to price-setting is setting tuition charges—but these cover only part of university income. Nothing can be done to raise income from endowment in response to higher costs of Federal regulation, nor can much be done to get more from Federal and state programs for research support, student aid, and general support simply to offset higher costs imposed by other Federal programs. 5) When private industry cannot shift costs, at least its tax

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burden is reduced, so it does not bear 100 percent of the costs of increased regulation; higher education, since it pays no income taxes, bears 100 percent of regulatory costs. 6) Because higher education is more labor intensive than most private business, social-program costs, which are related to number of employees, are more onerous for them than for businesses. And the increasing dependence of the Federal government on payroll taxes, which all enterprises pay, as against income taxes—which only profit-making enterprises pay—places a comparatively greater financial burden on higher education.

All true. One suspects that many branches of private business could also make arguments as to the special burdens that are imposed on *them* due to the distinctive character of their business. But is the academic enterprise *as such* hobbled? Aside from the discrimination statutes and regulations, it is hard to see how—except in the very general sense that the costs of Federal programs and regulations inevitably mean less is devoted to educational innovation. *Every industry is differentially affected by Federal regulations and programs, and can make a claim it could perform its function "better" if this differential impact were reduced.* Thus, the bus companies argue that gasoline taxes burden them especially, and the railroads say that maintaining their own rights of way burdens them especially, and both tell us we would have better service if Federal taxes and subsidies were arranged to take their problems into account.

It is valid to point out the distinctive economic characteristics of higher education as an enterprise, as it is valid to defend the interests of each industry as it is specially affected by government regulation, and as it is valid for cities and regions to demonstrate the differential impacts on them of what are expected to be fair burdens or benefits. The suggested solution in this case is also fairly typical: more money from the Federal government for higher education so higher education can shoulder the additional burden of government regulation without harm to educational and research functions.

This is a popular response, of course, and many see it as the main answer to the complaints of higher education. Thus, Stephen Bailey, one of the most informed and perceptive of the analysts of the relationships of the Federal government to higher education, writes: "Government must be aware of the special financial burdens on colleges and universities that accompany compliance with new laws and regulations. . . . It is not unreasonable for higher education to request government assistance in meeting some of the administrative

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costs imposed by new government mandates." And this is the view, too, of Carol van Alstyne:

> Now, in general, we accept the contention that the regulations do apply to higher education, but if they apply, then there are costs of meeting them which must be met. . . . Those who have written the laws and are applying them are beginning to recognize there are indeed costs involved in implementing these regulations, but then they argue that the higher education community must bear those costs, just as does any other enterprise. . . .

Dr. van Alstyne argues that the university position should be that "nonprofit educational enterprises are less able to recover those costs than are profit-oriented firms."

This seems an easy solution in principle to the problem of Federal regulations, even if difficult in execution. It would require good information, well-staffed "roof organizations" in Washington, and good lobbying. Understandably, it is one of the main conclusions that emerges from studies of the problem of Federal regulations by present and former staff members of the American Council on Education. It seems futile to them, I assume, to press the rather stronger, second position on why higher education is different, either because they doubt Congress will buy it, or because they don't themselves.

A higher claim?

The second and more interesting argument is that higher education is different from profit-oriented business not only in that it possesses special economic characteristics, but more importantly, that its essential functions are very different from and—one cannot avoid the presumption in this argument—higher than simply providing automobiles or toothpaste. The search for truth itself does seem a higher objective than most. So does the transmission of truth. And yet, despite my respect for this argument, one wonders if it will stand up politically, where it must, with Congressmen, their staffs, key lobbyists, and the media. Are there functions in higher education that are unique to it, of the highest value, and are they indeed distorted and withered as Federal regulation grows? Are there damages endured by the educational enterprise that are not to be assuaged solely by money?

This was the debate that ensued when the University Centers for Rational Alternatives conducted a conference on the problem of government and higher education in 1976.[4] At one end of the spectrum

[4] See *The University and the State,* edited by Sidney Hook, Paul Kurtz, and Miro Todorovich (Buffalo, New York, Prometheus Books, 1978).

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were those who saw only positive results from Federal regulation, and interpreted the attack on government regulation as a conservative, or reactionary, or indeed racist resistance to clearly progressive objectives. In the middle were those who accepted the objectives but were overwhelmed by the costs and problems of regulation. Better administration by the Federal government, and more money to assist in complying with regulations, seemed to them the answer. At the other end of the spectrum were those who argued that the distinctive functions of higher education were being seriously damaged, and money would not help. A separate, key axis of disagreement was on the question of whether higher education was like or unlike other regulated institutions, though among those who argued it was like other institutions there was a sharp division. To Kenneth Tollett, higher education was guilty of racism, as was the rest of American society: All should thus be subject to the strong discipline of government regulation. To Robert Bork, too, higher education could not expect special treatment from government. But he argued that just as higher education was harmed by government regulation, so too was business. Higher education could not expect different treatment from that accorded business, and they shared as well the fact that their *distinctive* and *different* functions—research and education for higher education, production of goods and services for business—were hobbled by the growth of government and the steady imposition of governmental objectives *on all autonomous institutions* of society.

I believe Bork set the problem properly. Higher education is in many ways the same as any other kind of enterprise, and if society sets for all of them a requirement that employees must be protected from unemployment, illness, and indigency in old age, or that they must not be discriminated against on grounds of race, ethnicity, sex, handicap, or age, then higher education cannot reasonably—and should not—demand an exception. Those who emphasize the inner core of higher education, the search for truth and its transmission, can make a claim for exemption from some government regulation on these grounds, similar to the claim one would make for a church, but higher education as a whole has so many other facets that it cannot succeed in making good the claim. Governmental rules should apply to all in their capacities as employers, or as builders and maintainers of physical facilities. The complaint that it costs too much is the lesser complaint, and can be managed by adding more staff, more lawyers, and more lobbyists.

Yet it is impossible to dismiss entirely higher education's claim to

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a distinctive inner core, as epitomized by the teaching and research function at its best. And there *is* a best, where teachers and students feel that their relationship is not bound by contract or susceptible to testing by administrative tribunals and courts, where researchers believe they are engaged in a distinctive autonomous search that is hampered when they are treated as contractors.

In its public face, higher education is like any other enterprise that uses buildings, hires employees, and signs contracts—and if it demands exemption it will not get very far. In its inner face, it is very different indeed. But in saying that I do not deny that *any* kind of enterprise is "different indeed" from others, and for the purposes of this article I put aside the question of whether these functions must be ordered in a hierarchy of worth or value. The problem is that the two faces are closely interconnected, and the inner face is damaged as the outer face complies with Federal regulation. I am convinced of the damage. And even those who tell us that higher education can live quite comfortably with government regulation alarm us in their prescriptions as to how this alliance is to be managed. For example, Ernest Gellhorn, Dean of the Arizona State University College of Law, and Barry B. Boyer, Associate Dean of the Faculty of Law and Jurisprudence at SUNY Buffalo, think the problem is much exaggerated. They tell us that we have transitional growing pains and, "In large measure they can be traced to conditions such as understaffing in the regulatory agency, and enforcement officials' unfamiliarity with the operations and mores of the university." The prescription seems to be more bureaucrats, more familiar with how universities work. The universities and colleges should themselves become more political and litigious and affect the regulatory process, we are told, and the "roof organization" of higher education must be strengthened to deal with the increased number of knowledgeable regulators: ". . . [A] single, central association can develop influence and resources that its dispersed members can rarely match. With a full-time specialized staff the association can master the intricacies of regulatory programs more completely than an administrator or manager who devotes only part of his or her attention to the task."

Not that the college or university administrator can thereby rest easy, knowing his Washington roof organization is on the job. He has quite a job, too. Charles B. Saunders, Jr., Vice President for Governmental Relations of the American Council on Education, gives the new job description that will help the roof organization domesticate the regulators:

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> Whether planning legal, political, or administrative action, however, the basic need is for better information from the individual campus to make the case for higher education. We need a moratorium on indignant rhetoric and vague laments that government will be the death of us. Instead we need facts and careful analysis.
>
> What Federal programs cause the greatest problem on *your* campus? Precisely how and why? Are the problems growing, and are the types of problems changing? What are the trends? Can you document increases in indirect costs resulting from Federal reporting and record-keeping requirements? What specific steps would you recommend to reduce the costs and administrative burdens of Federal programs? What specific changes would you suggest in the wording of Federal regulations? Have you analyzed the latest proposed regulations for agency programs which affect your campus, and have you shared the issues you identified with your associations and your congressman as well as the offending agency?
>
> These are the kinds of questions that must be asked and that individual institutions must answer for the higher-education community to make an effective case for continued progress in deregulation.

The job description necessary to live comfortably with regulation becomes even more alarming in the proposals of Alfred D. Sumberg, Director of Government Relations for the American Association of University Professors:

> The Office of Education estimates that it will take about three dozen sets of regulations to interpret and implement the funded programs under the education amendments [of 1976] . . . . There will be public hearings at various locations around the country, and there will be ample opportunity to comment on the proposed regulations in detail either at the hearings or in writing. Those proposed regulations require careful reading at the campus level and should be read in the context of experiences with those programs on the campus. Both written comments and oral testimony are carefully considered by the appropriate officials of the Office of Education and frequently revision is necessary prior to the issuance of final regulations. If past practice is followed, however, there will be only a handful of comments and little testimony submitted. Then at some later day, faculty and campus administrators will find themselves in conflict with some provision of the final regulations and they will wonder openly and articulately about how the regulations were drafted. . . .
>
> . . . [W]hen reading proposed regulations, one should analyze carefully the legislation and its legislative history, including committee reports and the debates on the floors of the House and Senate.

One wonders, after all this, what else a college administrator will have time to do!

It is not only that living comfortably with regulators requires turning college administrators into monitors of Federal legislation

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and regulation, researching the impact of Federal regulation on their campuses. It also means increasing the power of central Washington organizations, since only they will really understand what is going on, when to act, how to act, and who is to be influenced. It also means increasing the power of central administrators of traditionally decentralized institutions. The regulators are already very annoyed that college presidents and deans can't simply give orders, the way corporation presidents can. And indeed presidents and deans are desperately trying to find ways to achieve—even in the absence of the power to give orders—the results regulators want: For example, they require so many reports and justifications for the hiring of what is called a "majority male" that department chairmen are relieved when they can appoint a member of a minority or a woman.

Good intentions and alarming results

All these results follow from laws or regulations whose objectives seem entirely desirable, and which address themselves, it would appear, only to the public and quite legitimately regulatable face of higher education. But the fact is that even the legitimate objectives of regulations affect the college and university adversely, by overemphasizing its administration, and overemphasizing within administration the task of dealing with regulation and thus the roles of lawyers and litigators. And beyond this, there also seems no way of keeping much of the regulation dealing with the public face from infringing on the private face. Who can object to the Equal Pay Act, which requires that men and women receive the same pay for the same work? But then, the Department of Labor will insist on defining what is the "same work," and so presumably they will weigh the quality of research and teaching—something they have no capacity to do. Consider Estelle Fishbein's account of the Labor Department operations against Northeastern University. It is genuinely alarming:

> The Department of Labor has never issued regulations or guidelines regarding the application of the Equal Pay Act to faculty pay in higher education. No definitive policy statement has ever been issued. This, however, has not prevented the Department of Labor from bringing suit against Northeastern University, charging violation of the Equal Pay Act. The complaint filed in Federal court by the government is skeletal and conclusory despite the fact that it followed a two-year investigation. Finally, the department selected 57 cases of alleged sex discrimination in salary levels, not one of which involved alleged

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inequity within the university's academic departmental structure. Labor is apparently contending that it can select matchmates for female faculty members across department lines (one professor being likened to another), although nowhere has any statute or regulation given notice to universities that faculty in all departments must be paid the same, nor has any definitive policy statement been issued from the Department setting forth criteria to be used in equating faculty in the various disciplines. Quite recently the American Council on Education demanded of the Department of Labor, under authority of the Freedom of Information Act, the Department's policy memoranda and instructions to its enforcement personnel concerning application of the Equal Pay Act to faculty employees in universities; the Council also sought reports of all studies dealing with the application of the Act. The Department's reply indicated there were no documents of such a nature. Nevertheless, Northeastern University, in its negotiation of an out-of-court settlement, is being asked by the government for a consent decree that would include an admission of discrimination.

One other note on the possible damage that regulation inflicts: It is much more evident to those on the front lines of education—teachers and researchers—than it is to administrators. This is understandable. The administrators—because they are in contact with regulators, their own staffs of lawyers, and affirmative-action officers attempting to bring the institution into compliance—are burdened with the responsibility for budgets and the future of the institution, and therefore see more ways of adapting the institution to regulatory needs than do teachers and researchers. (Undoubtedly the latter have their own blind spots, since they do not have administrative responsibilities.) But teachers and researchers know better the harm done by complying with new regulations and requirements involving their research, the hiring of new faculty members, and—as they fear will happen in time—their preparations for and conducting of classes. (The regulations on the handicapped suggest teachers should make an effort to adapt their teaching to the needs of the variously handicapped who do not have auditory, visual, and speech faculties—an entering wedge?)

On this difference in perception—in this case between faculty members undertaking regulatory tasks, and faculty members when acting as researchers—a study of a sample of 61 institutional review boards passing on research involving human subjects is particularly revealing. Only 13 percent of the review-board members from the biomedical sciences, and 11 percent of the review-board members from the behavioral and social sciences agreed with the statement, "The review procedure is an unwarranted intrusion on an investiga-

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tor's autonomy—at least to some extent." But far higher percentages of research investigators agreed—25 and 38 percent of biomedical, and behavioral and social scientists, respectively. Presented with the statement, "The review committee gets into areas which are not appropriate to its functions—at least to some extent," 39 percent of the biomedical review-board members and 23 percent of those from the behavioral and social sciences agreed. Their colleagues—who were trying to get their research projects approved by the boards—agreed with the statement in much higher percentages: 50 and 49 percent.[5] What is intriguing in these results, of course, is that there are faculty members on both sides of this divide. But the message is clear: Place someone in the position of a regulator and he is likely to see his task as more important, his role as less intrusive, and the extension of his role as more justified, than do the people he regulates.

Essential prerequisites or irritating obstacles?

There *is* a problem with the Federal regulation of higher education. It is a problem that is not going to be settled by simply adjusting to regulation, because regulation inevitably and insistently begins to involve itself more and more with the functions of higher education that it considers crucial, and for good reason. Let us acknowledge that much of higher education is far from the pure-minded search for truth and its transmission, that research is often dominated by funding opportunities (which doesn't necessarily make it bad or unnecessary research), and that teaching is often rather a journeyman exercise, engaged in without passion by teachers and accepted by students mostly for purposes of acquiring a proper credential. But a very large number of institutions of higher education do preserve its essential character, and large numbers of administrators and faculty are engaged in protecting and carrying out these functions. Autonomy in the decisions as to what scholars to employ, what research enterprises to pursue, what students to admit, and how to teach them, seems to me the essential prerequisite for preserving the inner functions of higher education. And yet it is just these autonomous functions that Federal regulation increasingly finds irritating obstacles to carrying out ends set, sometimes by Congress, more often by Federal employees under pressure from groups which represent one or another organized sector of the population,

[5] Bradford H. Gray, Robert A. Cooke, Arnold S. Tannenbaum, "Research Involving Human Subjects," *Science,* Vol. 201 (September 20, 1978), p. 1100.

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and which are ready to appeal to the courts to impose on agencies their particular views of the proper functions of regulation.

The most drastic example to date of Federal intervention in the autonomous affairs of universities is to be found in the *Adam v. Richardson* (now *Adams v. Califano*) litigation, under which the NAACP, through the Federal courts, is requiring the Department of Health, Education, and Welfare to restructure higher education in those Southern states that in the past imposed and maintained segregated institutions. This litigation now requires these states to achieve certain proportions of white and black students in given institutions of higher education, and gives the Office of Civil Rights the responsibility to judge the legitimacy—based on presumed impact on segregation—of placing educational programs and faculties at different locations.

A new alliance

What is to be done? I have rejected on principled grounds the argument that higher education will manage well enough as the regulators and regulated get to know each other better, and as the government is persuaded to kick in some money to help institutions of higher education with the added costs. Of course more money will permit Northeastern to raise the wages of its female faculty to what the Wages and Hours Division considers appropriate. But it will not solve the problem of who is to judge the qualifications and worth of faculty, and determine what differential rewards are just and proper. Of course more money will help North Carolina solve the problem of moving its programs and facilities from one campus to another to comply with HEW's and the judge's mandate as to how to achieve a better racial balance between institutions. But it will not solve the problem of who is to determine the mission of different educational institutions and their programs and needs in the light of a distinctive mission. (And in this latter case it is even doubtful that, with all the coerced good will in the world, all the factors that lead blacks to choose one institution of higher education and whites to choose another can really be managed, whether by courts, HEW, the state systems, or the individual institutions. When the desired results are not forthcoming, the stage will be set for more intrusive intervention.)

I have also rejected on principle the argument that higher education should be exempt. I do not believe universities and colleges should advance the position that higher education must not suffer from insensitive and crude regulatory policies, but business and in-

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dustry may. Robert Bork well describes the obtuseness of some academics who think they can get very far with this manner of distinction:

> In the discussion that followed [my talk at the University Centers for Rational Alternatives conference], a prominent educator-administrator said government had to understand that university faculties were selected on the principle of excellence and that this principle distinguished professors from garbage collectors, whose selection, one gathered, may properly be governed on grounds other than excellence. I was struck not only by the persistence of the claim to university uniqueness but by the apparent use of garbage collection as a metaphor for the activities of the rest of society.

Higher education should argue that all institutions should be freed from the illegitimate expansion of governmental power, and its intrusion unnecessarily into the workings of autonomous institutions. Business should argue the same. And both should use their considerable influence and resources to restrict regulation to its legitimate objectives.

It may be properly asked, do these general terms have any explicit applications, or do they simply say, in disguised language, that higher education and industry alike should resist fairness for minorities, women, the handicapped? The answer is that this general prescription *can* be made in the particular, and without infringing on fairness, justice, or compassion. There is a sharp and radical difference between non-discrimination as required in Federal legislation, or affirmative action as required of government contractors, and the insistence by regulatory bodies that a group's proportion of the population is the measure of absence of discrimination, and that all contractors must set up goals that are in effect quotas. There is a sharp and radical difference between employing the handicapped or admitting them without discrimination to institutions of higher education as Congress has commanded, and extending the definition of the handicapped to include drug addicts and alcoholics, as new HEW regulations require. These are examples of an illegitimate bureaucratic expansionism in areas distinctive and crucial to higher education. I have no doubt there are similar examples in areas of regulation particularly crucial for business.

I have argued earlier that there is an inevitable tendency for regulation to expand—to do more than Congress requires, more than the Executive requires, more even than the written regulation requires. This tendency for regulation to expand is based on a new "iron triangle." The old iron triangle of the regulatory agency, the regulated industry, and the Congressional oversight committee, in

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the past led regulations to become protective of the regulated. The new triangle of the outside, well-organized special interest, the regulating agency, and the court, now move in the opposite direction. The regulating agencies become enemies of the institutions they regulate. It is this that must be contested. And it will not be contested well if higher education takes the pusillanimous and immoral position that it's all right for you to do it to them—just don't do it to us.

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On understanding Proposition 13

FRANK LEVY

ANY subject worth studying spawns at least two schools of thought. So it is with the current taxpayers' revolt. There is, first, a "macro" school of analysis, which views events of the last 14 months as a series of similar responses to a few root causes. The causes are rapid inflation, rising taxes, and the growing size and arrogance of government. The responses include California's Proposition 13, subsequent ballot initiatives in other states, and calls to limit Federal expenditures through a constitutional amendment. This broad view, congenial to the requirements of television news, has little use for the details that distinguish one state's tax-reform initiative from another's. As one young economist put it: "Those who would look [for explanations] to the circumstances of individual states are wasting their time."

For persons of the opposite view, the circumstances of individual states provide interesting and important variations. Some ballot initiatives proposed cutting current expenditures. Others proposed limiting future expenditure growth. Some focused on property taxes. Others applied to taxes in general. Some took place where budgets were in surplus. Others took place in states that were broke. And some initiatives won while others lost. Adherents of this form of analysis—the "micro" school of thought—argue that examining these

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variations will yield a more precise understanding of voter concerns —concerns that in fact may have differed from one state to the next.

What follows is a micro-school examination of Proposition 13. Because, in Eugene Bardach's phrase, the good is in the particulars, it is appropriate to begin with a summary of the initiative itself. Proposition 13, passed in June 1978, contained three major points:

1. For purposes of taxation, a property's full value would be set at its estimated market value in 1975 or its price at the time of its last sale, whichever occurred later. As long as a property was retained by the same owner, its full value could increase by no more than 2 percent per year. At time of sale, the full value could be increased to the actual sale price.

2. The combined property taxes of a city, a county, a school district, etc., would be limited to 1 percent of a property's full value. (In 1977, total property taxes on a typical California home averaged about 2.6 percent of market value.) The only exception to this limit was made for property taxes needed to retire bond issues that were outstanding as of June 1978.

3. Any general state tax increase would require a two-thirds vote in the legislature rather than the majority-vote requirement then in effect. Similarly, local governments could not increase property taxes above the 1-percent limit but could increase other local taxes, subject to a two-thirds majority in a referendum.

In at least one important respect Proposition 13 differed from most of the initiatives that were proposed in other states later in the year. At the time of its passage, voters were uncertain about the size of California's budget surplus and so Proposition 13 was perceived by them and by the national press as a potentially substantial expenditure cut. By contrast, in most other states electorates voted not on possible cuts in public spending, but on tax shifts or limits to future expenditure growth. Of the 17 states with one or more fiscal initiatives on the November ballot, only four voted on actual expenditure cuts. In two states (Michigan and Oregon), the cuts were defeated. In one state (Idaho), the cut passed. And in the fourth state (Nevada), the cut passed but it was a "free vote": Voters knew they would have to approve the initiative again in 1980 before it would take effect.

A limit on future expenditure growth promises controlled, if unpleasant, adjustments. A cut in current expenditures suggests something much more unsettling, something voters will not lightly embrace. The willingness of California voters to approve such a cut

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(by a two-to-one margin) suggests they were more angry than most. And so it is particularly useful to understand their motivations.

A natural line of inquiry is offered by recent California history. From 1968 through 1976, Californians saw numerous attempts to reduce property taxes and/or government expenditures by initiative. Many never qualified for the ballot. Those that did all failed. By examining these efforts we can ascertain those factors that changed between previous failures and Proposition 13's success.

The dawn of property-tax reform

The story of the recent taxpayer's revolt in California begins in the summer of 1965, when the *San Francisco Chronicle* began a series of stories on the bribery of property-tax assessors across the state. The *Chronicle* reported that elected assessors had received "campaign contributions" to "review and adjust" assessments on business properties. A similar series of articles was soon published in the *San Francisco Examiner*.

Several state legislators had been longtime proponents of property-tax reform. Reform, as they defined it, meant a uniform statewide ratio of a property's assessed value to its market value, with sufficient reassessment to keep the ratio current. Until the scandal, however, the legislature as a whole was unenthusiastic. In the spring of 1965, it had once again shunted aside a reform bill.

But once the scandal gained publicity, the legislature's attitude changed dramatically. By the middle of 1967, a strong reform bill had been signed into law. Assembly Bill 80, or the Petris-Knox bill, gave county assessors three years to reassess all property at 25 percent of market value and required frequent reassessments to keep the ratio intact.

Property-tax reform achieved great popularity because the newspaper stories had focused on abatements purchased by businessmen. From these stories, most voters drew the conclusion that business was not paying its fair share of the tax bill. The conclusion was not well founded: Businessmen often received tax breaks in preference to other businessmen, but in many jurisdictions, business properties as a whole were paying a disproportionately *high* percentage of the tax bill. Ironically, it was in San Francisco County that the discrepancy was greatest. As Diane Paul documented in *The Politics of the Property Tax,* single-family housing in San Francisco was assessed at about 9 percent of market value while commercial buildings were assessed at about 35 percent. Across the bay, in Alameda County,

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single-family housing was assessed at an average 22 percent while commercial property was assessed at 28 percent.

It followed that the adjustment to a uniform 25-percent assessment ratio often brought about a rapid increase in homeowner assessments. In theory, increased assessments need not mean increased tax bills: Local governments can reduce tax rates to compensate. But in California such compensation was rare. Local governments were required by the state constitution to tax all property at the same rate. As assessments on single-family housing were rising, assessments on commercial property were falling. As a result, the total tax base often changed relatively little. Local governments wishing to maintain property-tax revenues could not cut tax rates, even though single-family housing was assuming a greater proportionate share of the tax load. By the 1970's, in California and elsewhere, a similar shifting of the tax burden would become a major stimulus to the taxpayer's revolt.

Largely as a response to the increase in homeowners' tax bills, the "Watson Initiative" appeared on the ballot of November 1968 as Proposition 9. The initiative was developed and sponsored by Phillip Watson, County Assessor of Los Angeles. It involved a constitutional amendment that would have required property-tax revenues to be divided into two classes: Revenues going to "people-related services" (primarily education and welfare); and revenues going to "property-related services" (all uses except people-related services, for example, public safety and general government). Under the initiative, property-tax revenues for people-related services were to decline annually by 20 percent of their 1969-1970 levels until they were eliminated in 1973. Property-tax revenues for property-related services would be limited to 1 percent of a property's current market value.

The Watson Initiative was not so much concerned with reducing public spending as with changing the way it was financed. Both Watson and his opponents assumed that the state would fund those local-government functions that the initiative eliminated. But because Proposition 9 was unclear as to how this funding would occur, it provided the opportunity for opponents to paint a fearsome picture of the income- and sales-tax increases the initiative would require. In the end, voters were faced with a choice between an evil they knew and one they didn't.

The state legislature responded by passing a more moderate tax-relief alternative. By 1968, both legislators and then-Governor Reagan knew that assessment reform had produced unanticipated con-

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sequences. They also realized that were the Watson Initiative to pass, they would be in the unenviable position of having to raise state taxes sharply or implicitly approve sharp cuts in public schools and welfare payments. To help avoid this situation, the legislature passed California's first homeowner's property-tax exemption. Under the exemption, the first $750 of assessed value of an owner-occupied home would be exempt from property taxation. The revenues lost by local government under the exemption would be replaced by the state. In a county like Alameda where there had been relatively large assessment adjustments, the exemption would have cut the typical homeowner's Petris-Knox tax increase in half. In a county like Los Angeles with smaller assessment adjustments, the exemption would have offset the typical tax increase entirely.

To be sure, the legislature did not act with great dispatch. The homeowner's exemption, like the Watson initiative, would require voter approval of a constitutional amendment. But by the time the legislature finished action, the November ballots had already been printed. The homeowner's exemption had to be placed on a supplemental ballot with a special explanation sent to all voters. Nevertheless, the need for the amendment gave the legislature and Governor the opportunity to confront the Watson Initiative directly. The initiative was portrayed as having large and uncertain impacts on state taxes, while the exemption was said to embody "responsible tax relief."

But voter attitudes were also influenced by the economic context of the times. With one or two exceptions—San Diego County and the now-famous Marin County—housing market values were growing at moderate rates of 5 to 6 percent per year. Rapid assessment increases were not occurring in many counties, and where they did occur they could be attributed to one-time-only Petris-Knox adjustments, rather than to long-term trends. At the same time, according to the monthly *California Poll,* Californians felt optimistic about the economy in general. The absence of rapid, long-run assessment growth and the relatively favorable economic outlook together played a large part in determining the election outcomes. The homeowner's exemption passed with 54 percent of the vote. The Watson Initiative lost by better than two-to-one.

The Watson Initiative campaign was a prototype of the way the property-tax debate would go for nine more years. Property taxes were distasteful, but as long as they did not become outrageous people would remain cautious—too cautious to approve large cuts in public spending. And so long as spending cuts were regarded as

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unacceptable, proposals for property-tax relief would continue to raise the specter of large increases in sales and income taxes—a trade most voters were unwilling to make.

At the same time, it was unlikely that the property-tax issue would go away. The Petris-Knox bill ensured that property assessments would retain a 25-percent relationship to market value. By the early 1970's, most counties were on three-year, and some on two-year, reassessment cycles. The system had little political discretion to mitigate the effects of housing inflation on homeowner assessments.

In June 1970, Californians had the chance to vote on another tax-shift measure, Proposition 8. Whereas the Watson Initiative was clearly designed to cut property taxes, Proposition 8's motivations were more cloudy. Proposition 8 called for an expansion of the homeowner's exemption and a substantial increase in the state share of welfare and education costs. At the same time, Proposition 8 *did not* require local governments to translate the savings for localities into reduced property taxes. This lack of an explicit statement on tax reduction together with the nature of the proposition's sponsorship—for example, the California Teachers' Association—brought the immediate fire of taxpayers' associations and the League of Women Voters. Proposition 8 lost with 28 percent of the vote.

There was also an attempt in 1970 to place a more standard tax-limitation initiative on the ballot. The amendment's sponsor was Howard Jarvis, a lobbyist for a Los Angeles association of apartment-house owners. The attempt failed for lack of signatures.

In 1972, Phillip Watson qualified a second initiative for the November ballot. Proposition 14, like Watson's earlier Proposition 9, limited local property taxes and shifted most educational and welfare expenditures to the state. But Proposition 14 and Proposition 9 differed in two respects. First, Proposition 14 sought to anticipate the criticism that it would shift great costs to the state without creating corresponding sources of revenue. It specified a set of increases in the state sales tax, liquor tax, cigarette tax, and the tax on corporate income, which Watson claimed would be enough to pay for the increased state costs. Second, Proposition 14 began to deal with expenditure limitations rather than just tax shifts. It specified a new state-local educational finance arrangement in which every district would receive total revenues of $825 per child, about $100 per child below the then-current statewide average expenditure. The uniform educational-expenditure formula was intended to deal with the then-recent California Supreme Court decision in *Serrano v. Priest,* the decision which required California to revise its school finance for-

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mula to disassociate a school's available resources from its property-tax base.

By 1972, California was recovering from the national recession but its economic outlook was still uncertain. Thus economic conditions were more favorable to Proposition 14 than the optimistic 1968 outlook had been to Proposition 9. More important, assessments for single-family homes were beginning to increase at 7 to 8 percent per year as the result of housing-market inflation—not simply one-time government-mandated adjustments. Nonetheless, Proposition 14 failed badly with only one-third of the vote.

The wisdom of hindsight suggests the proposition's failure was due in large part to its own specificity. Its proposed increases in alcohol and tobacco taxes enraged the alcohol and tobacco industries, which became the chief financiers of the anti-14 campaign. Similarly, the explicit proposal to reduce and make uniform expenditures for education unnerved many persons who felt that education was still worthy of strong support and that educational-spending decisions were best left at the local level. Moreover, Proposition 14's specificity did not keep Watson's critics (including Governor Reagan) from charging that his calculations were wrong and that the proposition would leave the state with a large revenue gap which could be made up only by substantial increases in income and sales taxes.

As in 1968, the state legislature moved to draft a moderate alternative, once again somewhat belatedly. The resulting legislation, known as Senate Bill 90, was not completed until after Proposition 14's November defeat. Nonetheless, Senate Bill 90 spoke directly to many of Proposition 14's concerns and demonstrated that the legislature was aware of the homeowner's plight. The bill contained an expansion of the homeowner's exemption to $1,750 (from $750), a modest income-tax credit for renters, limits on city and county tax rates, and limits on school-district expenditure levels. Its costs—estimated at $1.1 billion in its first year—would be funded by an increase in the state sales tax.

Some recent history

In 1973, California confronted another tax-reform measure, Governor Reagan's Proposition 1. Unlike previous initiatives, Proposition 1 was not concerned with shifting taxes but with limiting the size of the public sector. It elaborated on the local tax limits in Senate Bill 90 and increased the majority required for state tax bills to two-thirds. The proposition also required that total state expenditures

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could increase no faster than the increase in state income. Governor Reagan's authorship gave Proposition 1 some credibility, but the proposition was written in complex language that aroused substantial suspicion. Opponents argued that any limit on state spending would force necessary services back onto local government and the property tax. This argument combined with group interests—for example, those of state employees—and Proposition 1 lost with 44 percent of the vote.

Sometime after 1973, California entered into a period of rapid and accelerating housing inflation. Federal Home Loan Bank Board data indicate that between 1973 and 1977, housing prices in the Los Angeles and San Francisco metropolitan areas were increasing at an average rate of 14 to 15 percent per year, a rate significantly higher than that in most other areas of the country.

The reasons for the particular intensity of housing inflation in California are not entirely clear. Leo Grebler and Frank B. Mittelbach, of the Graduate School of Management at UCLA, suggest in their recent book, *The Inflation of House Prices,* a number of factors that intensified California's excess demand, including rapidly rising incomes and immigration. John J. Kirlin and Jeffrey I. Chapman of the University of Southern California point to the extensive use of bank financing via trust deeds rather than mortgages, the more common instrument in most states. They note that a trust deed makes it relatively easy for a bank to reacquire a property in default, without encumbrances and without litigation. From the banks' perspective, the trust deed made housing that much more liquid an asset. Correspondingly, banks were encouraged to accommodate the housing inflation through 30-year mortgages and other devices.

In a world of "unreformed" property taxes, tax assessors might have reacted to the housing inflation by exercising discretion or increasing assessments at a slow pace. But California's property-tax system, as reformed by Petris-Knox, kept assessed values and market values in a fixed ratio. These reassessments raised the possibility that a family would find itself financially distressed by housing costs well above what they expected when they had purchased their home.

Consider a family in Los Angeles that made $18,000 in 1973. At that time a typical home was financed at a 7¾-percent rate of interest for 25 years. Institutions required a 20-percent down payment and used a 25-percent rule of thumb: The sum of the monthly housing payment and property-tax payment should be less than 25 percent of gross monthly income. The combined Los Angeles tax rates

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for city, county, and the Los Angeles Unified School District stood at about $12.25 per $100 of assessed valuation (and the first $1,750 of assessed valuation was tax exempt under Senate Bill 90). Taking all these factors into account, a bank would have judged the family capable of purchasing a $47,500 home. The annual property-tax bill would have been slightly over $1,000 per year. By 1976, typical reassessments would have increased the family's annual property-tax bill by $730. By 1977, their tax bill would have risen by an additional $400 per year, a nominal tax increase of over 100 percent in four years!

In addition, public concern was aggravated by several factors. In practice, the rate of housing inflation was accelerating, not constant —so homeowners could well believe things were "getting out of control." Moreover, even the most efficient counties fully reassessed properties only every two years, and thus individual assessments did not rise smoothly over time. Rather, each year one-third to one-half of all homeowners would receive an assessment increase of 25 to 40 percent, and their protests would remind other homeowners, who in the previous year or two had received a similar increase, that they could expect another whopping boost in the not-too-distant future.

In 1976, there were two attempts to place property-tax initiatives on the ballot. One was sponsored by Phillip Watson. The other was sponsored by Paul Gann, a retired Sacramento realtor. Surprisingly, neither initiative got the necessary number of signatures.

There is more to the story but events to this point should give comfort to those who argue that there is nothing new under the sun. Proposition 13 was not a spontaneous phenomenon, but was rather the latest inning in a biennial event, a restitching of numerous earlier initiatives. A limitation on state expenditures, passed in seven states last fall, was almost passed in California six years ago.

And what of Jarvis and Gann? They were both good campaigners but not the great initiators portrayed in the media. By 1976, both men had tried standard tax initiatives and, unlike Watson and Reagan, they had failed to stir a ripple. History will record that in 1978 Jarvis and Gann hit a home run. But good history will also record that circumstances served them a fat pitch.

Where were the local governments?

The Los Angeles homeowner's tax calculation cited above implicitly assumes that increased assessments led to increased tax bills or, put another way, that local jurisdictions did not lower their tax

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rates to compensate for higher homeowner assessments. Over the 1973-77 period this was the case, by and large. Estimates prepared by the California Office of the Legislative Analyst suggest that the average combined tax rate faced by a California homeowner declined about 5 percent from FY 1974 to FY 1978, or about 1.2 percent per year, but this was not nearly enough to offset the assessment increases. Why was local governments' response so weak?

The commonplace view holds that tax rates did not fall because local governments were greedy, taking in all they could while they could. A second view holds that, for a variety of reasons, local revenues increased more slowly than assessed values on housing would suggest, and that as a result local governments were left with an undeserved reputation. There is, as in most cases, some evidence on each side—but the second view seems the more accurate.

The case for local-government greed is weakened at the outset because none of the available data sources shows an excessive growth in local expenditures. Figures from the Office of the State Controller show aggregate local expenditure grew at about 9 percent per year in per capita terms. This was about 2 percent per year above the growth in the Consumer Price Index, but well below the 15 percent annual growth rates in the assessed values of single-family homes.

Similar data come from the Federal *Census of Government,* and show that between 1973 and 1977, local-government employment per capita grew at about 1 percent per year while average earnings grew at 7 percent per year. The earnings growth rate was higher than that of most private-sector wages, but it did not keep pace with inflation. Here too, the data suggest that local-government payrolls were increasing but their growth was far more moderate than the growth of housing assessments.

Some persons have charged that local-government greed was expressed not in increased payrolls, but rather in the establishment of large, unrestricted surpluses. There are, however, no hard data to support this proposition and at least some soft data to support the opposite view. To be sure, the State Controller's data, the Census's employment data, and existing data on local surpluses are all open to question. But together, they suggest that during the period of rapid assessment increases, local governments were not exploding but were growing slightly faster than the rate of inflation. In particular, the growth rate of local expenditures—less than 10 percent per year—was significantly below the growth rate of assessments of single-family homes.

It is this last fact which opens the door to a more charitable view

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of local governments, a view justified by several institutional factors.[1] One such factor was the composition of the property-tax rolls. In 1973, about 33 percent of the value of the rolls represented owner-occupied, single-family housing. Another 5 to 7 percent was single-family housing occupied by renters. The remainder was commercial property. Commercial-property assessments are typically based on discounted income, and during the early and middle 1970's —the era of stagflation—business incomes were not doing well. Accordingly, commercial assessments were growing relatively slowly.

For example, the counties sampled by the State Board of Equalization in 1973 and 1976 had an average annual-growth rate of 12.8 percent for single-family homes but only 7.6 percent (per parcel) for all other properties.[2] Similarly, estimates by the Office of the Legislative Analyst indicate that between FY 1977 and FY 1978 the value of all owner-occupied single-family homes increased by 20 percent while the value of all other property on the rolls increased by 10.5 percent. *The difference in these growth rates was important because, as noted earlier, a local jurisdiction had to tax all properties at the same rate. If a local government wanted to reduce sharply the tax rate faced by homeowners, the rate reduction would apply to commercial properties as well, thereby risking a substantial revenue loss.* In practice, tax rates fell only slowly. As a result, property taxes on single-family homes exploded while total property-tax collections grew only slightly faster than general inflation. The apparent paradox can be resolved by seeing that in the mid-1970's, as in the original Petris-Knox adjustments, single-family homes were assuming a greater share of all property-tax revenues.

This shifting of the property-tax burden was reinforced by a number of specific circumstances. For cities, property-tax collections were a relatively small portion of all revenues—about 25 percent. No matter how fast they grew, they were insufficient to finance any spending spree. In addition, many cities had one eye on the financial troubles of New York and so were in no mood to cut property taxes sharply or do anything else which might undermine their financial positions.

School districts—which in California are autonomous governmen-

[1] I am particularly indebted to David Doerr, Chief Consultant on the staff of the California Assembly's Revenue and Taxation Committee, for an explanation of these points.

[2] The 1973-76 cycle includes Alameda, Los Angeles, Fresno, and San Joaquin counties, among others, and accounts for about one-half of the assessed valuation in the state. In interpreting these calculations, note that assessed value per commercial property is a number highly subject to sampling variability.

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tal units—had a problem of a different sort. Through 1977, California distributed much of its aid to education through an equalization formula. Calculated on the basis of a predetermined, "appropriate" level of expenditure per child, the formula was designed to concentrate state aid on districts with low tax bases. However, the formula presupposed static economic conditions. In a dynamic situation, in which assessed values are rising everywhere, every district will *appear* to be richer and so all districts will lose state aid. Thus, increases in a school district's property-tax base were offset by declines in state aid—leaving the school district in a poor position to reduce tax rates.

In the face of the growing burden on homeowners and local governments, the fiscal limits passed in 1972 by the legislature in Senate Bill 90 were generally ineffective. The limits on cities and counties referred to permissible tax *rates*. The tax bills on owner-occupied housing were growing not from increased tax rates, but from increased assessments. Actually, tax rates were marginally declining even as tax bills rapidly grew. Similarly, the expenditure limits on local education generally kept increases in educational expenditures at about the rate of inflation, but the design of the state-aid formula shifted the burden of educational funding onto the local tax base and, thereby, onto the single-family home.

California taxes: How high were they?

To this point, we have focused on rapidly increasing property taxes for single-family homes. But rational voters should respond to the level of taxes as well as the rate of increase. Moreover, the macro school of analysis would argue that voters are rebelling against all taxes rather than the property tax in isolation. It would thus be useful to know whether California's taxes, as perceived by the voters, were out of line with taxes in the rest of the nation.

Unfortunately, most existing studies are not really suited to this purpose. Several authors have examined state-by-state ratios of aggregate taxes to personal income. But this ratio lumps together taxes that voters perceive directly with taxes that are perceived indirectly if at all, such as the portion of property taxes paid by business.

It is possible to construct a crude estimate of a state's "perceived property taxes" by taking total property-tax collections multiplied by the proportion of all assessed valuation in the state comprised of residential property. Such a statistic, of course, has problems of its own. In particular, it assumes that residential and other property are

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taxed at equivalent rates, even though the two property types may be concentrated in different jurisdictions. It also does not correct for homeowner exemptions, "circuit breakers," and other existing property-tax relief. Nonetheless, the statistic provides a rough estimate of what voters are facing. The table on the next page contains the 1976 ratio of each state's perceived property taxes to its total personal income. The table also contains a second ratio—the sum of perceived property taxes, state and local personal-income taxes, and state and local sales taxes, all divided by personal income. This can be used as a rough index of states' "total perceived taxes."

The data show on both measures that California ranked quite high. Nationally, perceived property taxes are, on average, 2.2 percent of a state's total personal income. California's perceived property taxes were 3.9 percent of personal income, a ratio higher than all but five other states. Total perceived taxes average 6.3 percent of a state's revenue. California's ratio was 9.2 percent, a figure tied with Wisconsin and topped only by Hawaii and New York. Thus the assumption of some that the rapid increase in property taxes caused Californians to react to what were, in fact, relatively low tax bills is simply incorrect.

Where was the state government?

How local governments should have responded to the tax calamity is a debatable question. That the state government "dropped the ball" is not. In the middle months of 1977, before most voters had heard of either Howard Jarvis or Paul Gann, the state had the opportunity to pass a moderate program of tax relief. Several tax-relief bills were before the legislature, and at least some funding sources were available. But in September 1977, the legislature adjourned in disarray, unable to come to an agreement. The result was almost the mirror image of 1968 and 1972: In those years Governor Reagan and the legislature had acted relatively late, but they produced moderate alternatives to ballot initiatives. In 1977, Governor Brown and the legislature tried to act early and their failure was a major cause of Proposition 13's subsequent success.

The state's failure to act had two major causes: disagreement over the design of a property-tax bill, and uncertainty over the amount of relief the state could afford. This uncertainty arose from confusion over the size of the state's budget surplus—a subject which even now remains a source of great confusion.

By any measure, the recent growth of the state surplus was extra-

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State-by-State Computations of Perceived Property Taxes and Perceived Total Taxes as a Percentage of Personal Income, 1975-76[1]

State	Perceived Property Taxes/Total Personal Income	Perceived Total Taxes/Total Personal Income	State	Perceived Property Taxes/Total Personal Income	Perceived Total Taxes/Total Personal Income
Alabama	0.7%	4.9%	Nebraska	1.8%	4.8%
Alaska	4.0	8.9	Nevada	1.9	4.7
Arizona	2.0	6.6	New Hampshire	4.4	4.5
Arkansas	0.9	4.9	New Jersey	4.7	6.5
California	3.9	9.2	New Mexico	0.8	6.3
Colorado	2.4	7.6	New York	3.2	9.6
Connecticut	3.8	6.4	North Carolina	1.3	5.6
Delaware	1.2	4.9	North Dakota	1.0	5.9
D.C.	1.6	6.8	Ohio	1.7	4.2
Florida	2.1	4.8	Oklahoma	1.1	4.5
Georgia	1.7	6.0	Oregon	2.8	6.3
Hawaii	1.6	10.2	Pennsylvania	2.0	5.4
Idaho	1.4	5.8	Rhode Island	3.6	7.2
Illinois	2.1	6.4	South Carolina	1.0	5.6
Indiana	2.1	6.4	South Dakota	1.8	4.8
Iowa	1.6	5.8	Tennessee	1.1	4.8
Kansas	1.8	5.4	Texas	1.5	4.0
Kentucky	1.1	5.2	Utah	1.7	7.7
Louisiana	0.9	5.4	Vermont	3.8	7.3
Maine	4.1	8.1	Virginia	1.9	5.8
Maryland	2.2	6.4	Washington	1.9	6.7
Massachusetts	5.1	9.1	West Virginia	1.1	7.2
Michigan	3.2	7.0	Wisconsin	3.3	9.2
Minnesota	2.4	7.9	Wyoming	1.1	4.8
Mississippi	1.1	6.7			
Missouri	1.7	5.4	Average for all states and the District of Columbia	2.2	6.3
Montana	2.2	4.6			

[1] Sources: Various publications of the Bureau of the Census, U.S. Department of Commerce.

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ordinary. In January 1977 estimates of the surplus were in the range of $940 million, or about 7.5 percent of state revenues. By June of 1978 people were discussing surplus estimates in the range of $6.1 billion. The increase of $5.2 billion had three primary sources:

1. *Planned current surpluses ($2.19 billion).* When the FY 1978 budget was first presented in January 1977, it had a $540 million estimated current surplus.[3] When the FY 1979 budget was first presented in January 1978, it had an estimated current surplus of $1.65 billion.

2. *Revenue underestimates ($1.56 billion).* Between January 1977 and May 1978, revenue estimates for FY 1977, FY 1978, and FY 1979 increased by $1.93 billion. This was partially offset by expenditure underestimates of $370 million.

3. *Expenditure cuts ($1.35 billion).* In June of 1978, after Proposition 13 had passed, FY 1979 expenditures were reduced by $1.35 billion. These changes were direct and indirect results of Proposition 13 itself.

The first two factors—the factors prior to Proposition 13—resulted from the combination of a relatively progressive state income tax, a sustained economic recovery (coupled with inflation), and Governor Brown's desire to shield the developing surplus from what he saw as pressure for unnecessary spending.

Governor Brown took office in January 1975. In the two preceding years, a severe national recession had seriously damaged California's economy. Nonetheless, Governor Reagan had left Brown with an FY 1975 accumulated surplus (as of June 30, 1975) of $380 million, about 5 percent of state revenues.

More important, Reagan left Brown an elastic tax system. When Brown took office about 30 percent of the state's general fund came from a personal-income tax, while almost 40 percent came from its sales tax. Both taxes were responsive to economic activity. The income tax, in particular, was highly progressive. (It had bracket rates for a single earner running from 1 percent to 11 percent with the top bracket being reached at $15,500 of adjusted gross income.) Its

[3] The state's fiscal year begins on July 1. A current surplus refers to an excess of revenues over expenditures within the budget of a given year. An accumulated surplus refers to total uncommitted funds on hand at a particular time. Thus, for example, the funds available for allocation over FY 1979 would be the sum of the accumulated surplus the last day of FY 1978, June 30, 1978, plus the current surplus in FY 1979.

For simplicity, we will use the term "surplus" to refer to the unrestricted portion of the surplus, exclusive of funds in restricted accounts. We will also exclude from consideration the unrestricted funds in the Federal revenue-sharing account which remained relatively constant over the period.

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"elasticity" during the middle 1970's was such that a 1-percent rise in state income would increase state income-tax revenues by 1.6 percent. In the inflationary environment of the 1970's, taxable income was typically rising at 10 percent per year. An assemblyman involved in passing the income tax said, "When we [Governor Reagan and the legislature] passed it, we knew we were taking care of taxes for a long time to come." It was, as the assemblyman noted, a money-making machine.

A review of the FY 1977 budget illustrates how efficient this money-making machine actually was. When the budget was first proposed in January 1976, it was assumed that the FY 1976 budget would close with an accumulated surplus of $301 million and FY 1977 revenues would be $10.4 billion. When these figures were combined with anticipated expenditures, they produced an FY 1977 accumulated surplus estimated to be $350 million. By January 1978, final FY 1977 estimates were complete: They showed that FY 1976 had an actual accumulated surplus of $904 million (rather than $301 million) and FY 1977 revenues were actually $11.4 billion (rather than $10.4 billion), leading to a FY 1977 accumulated surplus of $1.8 billion!

After the fact, these revenue underestimates by the Department of Finance came under attack from legislators and the public alike. From first to final estimates, FY 1976 revenues were underestimated by $500 million, and FY 1977 revenues underestimated by $1.0 billion. And despite these earlier lessons, FY 1978 revenue estimates needed to be increased $1.1 billion only six months into the fiscal year.

In part the miscalculations were due to an unexpectedly vigorous economic recovery—the extent of which was something the Department of Finance, like any good budgeting organization, was likely to underestimate. It is always easier to distribute an unexpected surplus than to make up for an unexpected deficit. But there is also strong anecdotal evidence to suggest that Governor Brown himself encouraged the Department of Finance to avoid any changes—such as revisions of revenue-estimating procedures—which would bring the surplus into focus. The less that was known about the size of the surplus, the more the Governor could preserve his freedom of action: to spend the surplus on some special project, to cut taxes in a bid for re-election, to avoid having to increase taxes during a second term, or whatever.

By the spring of 1977, when the legislature first began to debate property-tax relief, they were looking at an accumulated surplus of

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$2.4 billion. However, the accumulated surplus was only one part of the problem. A politically feasible property-tax relief program would have to be ongoing; future budgets would have to generate necessary funds even after the accumulated surplus had diminished. Put another way, few legislators wanted to cut property taxes in 1977 only to have to raise other taxes or cut aid to localities in 1979 or 1980.

It was on this point that the legislature received conservative advice not only from the Department of Finance, but also from its own staff. In May 1977, the State Senate received testimony from John L. Vickerman, a ranking official in the Office of the Legislative Analyst, who warned that even a moderate package then under consideration —one costing about $600 million in its first year—might necessitate a tax increase at some time in the next two or three years. Vickerman's warning was based on specific considerations—such as, that the state would soon have to increase school aid markedly to comply with the *Serrano* decision—but it was also based on revenue estimates more conservative than those issued by the Department of Finance. Moreover, the long-run surplus estimates of both the Department of Finance and the Office of the Legislative Analyst were based on assumptions of "business as usual," assumptions which Proposition 13 would eventually overturn. For example, the Department of Finance's five-year budget projections issued in the fall of 1977 and the winter of 1978 assumed that expenditures for existing state programs would increase at slightly over 10 percent per year, while expenditures would increase by an additional 2 percent per year due to new legislative programs. To have altered these assumptions radically—to have assumed that in a given year there would be a pay and hiring freeze, or to assume that the government would sharply curtail new programs—would not have been reasonable in the absence of a radical shift in the political environment. In fact such a shift was coming, but the legislature had not yet sensed it.

The collapse of the tax-relief bill

The legislature's problem was further complicated by splits over the design of a property-tax bill. When debate began, there were two camps: those who wanted a moderate-to-large bill requiring some new taxes, and those who wanted a smaller bill financed by the surplus alone. By April 1977 the legislature had three property-tax bills under consideration. Two were larger bills: an Assembly bill costing $775 million in the first year and a Senate bill costing

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$925 million in the first year. Both required new taxes. The third was more moderate, a Senate bill costing $605 million in the first year which was to be financed by the surplus alone. All three bills focused property-tax relief on low- and middle-income families, a departure from past practices.

By May 1977, the extent of the legislature's disagreement was clear as the Senate passed *both* its larger and smaller bills and sent them to the Assembly. The Assembly, in turn, passed its $775 million bill. By June all three bills had gone to a conference committee.

At the end of the summer, the conference committee reported out a bill costing $4.7 billion over five years. Its tax relief was tied to a household's income and the bill itself was to be financed largely from the accumulating state surplus. While the bill was supposed to be a compromise, the problems of the spring remained. The legislature came under a stream of attacks suggesting they were inviting future tax increases. Moreover, Senate Republicans began to object strenuously to the absence of tax relief for higher-income households. Such disagreements were important because in the California legislature, any appropriations bill must pass each house by a two-thirds vote of the members. It was because of this requirement that tax relief ultimately failed. The Assembly passed the conference-committee bill 56 to 22, but the Senate—the more conservative chamber—defeated it 16 to 23. With time running out, the conference committee brought forth a revised bill. This time the Assembly postponed action until they knew the outcome in the Senate. The Senate voted in favor of the bill but only by 21 to 15, less than the two-thirds majority required. (One Democrat joined all 14 Republicans in opposition.) The legislature adjourned with no bill.

It is natural to contrast the legislature's failure to act in 1977 with its tardy but effective action in 1968 and 1972. Both 1968 and 1972 had been statewide-election years. 1977 was not an election year and presumably this gave all parties the illusion of time for maneuver.[4] Equally important was that, by the fall, Republicans—and particularly Senate Republicans—appear to have adopted a rejectionist stance, condemning proposals similar to those they had supported in the spring. Some have suggested their newfound opposition was part of a general electoral strategy. Republicans were entering 1978 in an unexposed position. Of the 80 Assembly seats, Republicans held only 23. Of the 20 Senate contests (the California State Senate has four-year-terms, with half the seats elected every two years), only

[4] I am thankful to Dean Tibbs for a discussion of these events.

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three involved Republican seats and all three incumbents would retire before the primary. And the only Republican statewide officeholder, the Attorney General, was running for governor. In this situation, Republicans could risk an obstructionist strategy designed to make the Democrats look bad, for if people reacted by attacking all incumbents, Republicans had little to lose.

Normally, a Democratic governor would try to counter such obstruction by a campaign of opposition-bashing. But Governor Brown also had an eye on 1978. Since his election, his administration had developed a strong anti-business image by elevating environmental concerns far above economic growth. As the election approached, the Governor was attempting to adopt a more pro-business stance. Such a move made good political sense since defections from the Democratic center—especially by big labor—were far more likely than defections from the Democratic left. But courting business interests effectively ruled out a virulent anti-Republican campaign. The Republicans could proceed unscathed.

The rest of the story is well known. Shortly after the legislative session collapsed, Howard Jarvis and Paul Gann began circulating petitions for an initiative to limit property taxes. Their initiative was more concerned with tax cuts than tax shifts. Like the Watson initiatives, they specified a large cut in local property taxes, but unlike the Watson efforts they did *not* allocate the cut to specific services (with the implication that these services would be funded by the state). And like Reagan's Proposition 1, they sought to control the ability of the state to compensate for reduced local revenues by increasing the majority required for all new state tax legislation to two-thirds. Finally, in a departure from past initiatives, Jarvis and Gann sought to limit the future growth of local revenues by separating assessed values from market values as long as the property was retained by the same owner. The initiative was estimated to cut property taxes by $7 billion in FY 1979. Proposition 13 qualified for the ballot within one month.

In January 1978 the legislature reconvened and attempted to construct what was now an alternative proposal. By this time, the size of the state surplus was becoming clearer, but the legislature continued to disagree over the appropriate distribution of benefits. Ultimately, they passed a compromise package, costing $1.6 billion for FY 1979. But it labored under substantial handicaps. The legislature's squabbling in January and in the previous fall gave the bill a reluctant, second-best quality, as something that would not have been undertaken at all but for Proposition 13. Moreover, the

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compromise contained provisions for separate tax rates on residential and commercial property and this, in turn, required a constitutional amendment, listed as Proposition 8 on the June ballot. This could have provided a good opportunity to confront Proposition 13 directly, but as the legislature's bill was written, Proposition 8 spoke only of taxing residential and commercial property separately. It said nothing about tax relief *per se*. Consequently, at least some voters perceived Proposition 8 as only a vague promise of tax relief in the future and did not realize it was, in fact, the final piece required to implement a bill that had already been signed by the Governor.

Despite these handicaps, Proposition 8 had some chance of passage (and Proposition 13 of defeat) until May 1978, when Los Angeles County received its FY 1979 assessments. The data showed the total value of the property-tax rolls had increased by 17.5 percent—a remarkable figure considering that only one-third of the properties had been reassessed. Assessment increases on single-family homes of 50 to 100 percent were not uncommon and these results were broadcast widely across the state. While other counties had not yet released their assessments, the numbers from Los Angeles made the election a foregone conclusion. Proposition 13 won with 65 percent of the vote.

What happens next?

This detailed history of California tax-reform initiatives gives us a more precise picture of voter concerns: It appears that California voters were primarily concerned with high and rapidly increasing property taxes. Homeowners were caught in a system of taxation and aid formulas that shifted an increasing portion of the tax bill onto single-family homes. Local-government officials were relatively powerless to solve the problem. The Governor and the legislature showed no great enthusiasm for solving the problem. And so voters took the matter into their own hands.

This interpretation of the event is surely a modest one. Shortly after the election, members of the previously mentioned macro school—most notably, Howard Jarvis—described the vote as an attack against inflation, large and arrogant government, and taxes of all kinds. This interpretation was soon adopted by the media, but existing evidence suggests it is hyperbolic.

Ascertaining voters' true attitudes is a chancy business but a variety of data is available from tabulations of the monthly *California*

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Poll. With respect to inflation, the most relevant data come from a question posed in January 1978 asking respondents to compare their current economic status with their economic status in January 1977. Forty-one percent said they were doing better in 1978 than in 1977, a far more optimistic outlook than in other recent years. With respect to taxes, the relevant data come from a *California Poll* taken in the middle of 1977. One question asked respondents to identify those taxes which they felt were too high. Multiple answers were permitted. Sixty percent of the sample (including 70 percent of homeowners) felt that property taxes were too high, about double the national response to similar questions. By contrast, the Federal income tax, the state income tax, and other taxes were mentioned no more than 15 percent of the time, about one-half the typical national response.

Data on voter attitudes toward government come from a *California Poll* taken in the week before the Proposition 13 vote. Included in the poll was a series of questions concerning the appropriate level of spending on services such as mental health, court administration, street and highway maintenance, and building repair. In each case the respondent was asked whether the amount of taxpayer money going to the service should be increased, left alone, or cut back. The poll results have been extensively analyzed by Jack Citrin, from the University of California at Berkeley, who found that only four of the fifteen services examined received a response which was close to or actually negative. Two of the criticized services were welfare and public housing. The other two were "City and County Administration" and "Environmental Protection Regulation." These last two, as Citrin notes, were loaded issues: Discussing "administrators" without reference to what they administer and discussing anything with the word "regulation" in the title both invite a negative response.

Citrin's analysis also shows that support for Proposition 13 was not confined to voters who wanted significant budget cuts. Citrin defined a voter as "generally satisfied" with government services if he or she wanted spending cuts in no more than three of the fifteen services listed. Yet he found that even these "generally satisfied" voters favored Proposition 13 by 52 to 48 percent.

To be sure, a variety of other sentiments existed. But the data, taken as a whole, suggest that Proposition 13 was a referendum on property taxes: Property taxes had to be brought under control and if that necessitated cuts in government spending, it would be an unfortunate but necessary by-product. Had homeowner property

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taxes not been increasing so quickly, Californians might well have preferred more moderate alternatives. In particular, they might have led other states in approving a limit to future spending growth, something they almost did five years earlier.

If Californians are satisfied with the current size of the public sector, they are fortunate, because evidence indicates the public sector will remain at roughly its current size for some time to come. To see why this is so, it is necessary to re-examine the state's financial position.

By May 1978 the available surplus for FY 1979 had reached a reported figure of $3.3 billion. But this figure was in a sense artificially small, since it assumed expenditure of $1.6 billion for the legislature's compromise tax-relief bill. When Proposition 8 was defeated, the $1.6 billion was returned to the state surplus.

The simultaneous passage of Proposition 13 further increased the surplus by cutting $700 million from anticipated FY 1979 expenditures. By lowering local property-tax bills, Proposition 13 lowered state property-tax relief via the homeowner's exemption. Finally, Governor Brown, a Proposition 13 opponent, quickly shifted positions and made last-minute budget cuts totaling $600 million, including a pay freeze, a hiring freeze, a freeze on benefit levels in the welfare program, and deletion of a program to make the state of California part owner of a communications satellite. Together, these changes increased the available surplus for FY 1979 from $3.3 billion to $6.2 billion, all apparently in three weeks time.

Before June was out, the Governor and legislature began to dispose of the surplus in several ways. They passed a one-year emergency assistance bill for local governments at a total cost of $4.2 billion. They passed a large round of one-year tax cuts together with a smaller, permanent, partial indexation of the state income-tax system. Under the indexation, certain personal exemptions were adjusted annually for changes in the price level. But tax-rate-bracket limits were adjusted only for the portion of inflation in excess of 3 percent, leaving the income-tax system relatively elastic.

The result of these changes was a modest decrease in public expenditures—something short of Armageddon. The Governor's state budget cuts represented a reduction of about 7 percent in expenditures on existing programs. Local governments lost $7.2 billion of property-tax revenues under Proposition 13, but the infusion of the $4.2 billion emergency state aid compensated somewhat, leaving them with a shortfall of $2.9 billion—a 10-percent reduction in their total revenues received from all sources.

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At the time these measures were announced, various observers—encouraged by members of the state administration—shifted their concern from Armageddon today to Armageddon tomorrow. While the state could get through FY 1979, they said, it could not continue such emergency local aid through FY 1980. But such a view does not square with the numbers. The Department of Finance's own revenue estimates, combined with the Governor's determination to hold down state costs, suggest the state can bail out localities for the foreseeable future. In fact, Governor Brown has made the continuation of such aid part of his FY 1980 budget and there is no reason to expect radical readjustments any time soon.

In essence then, California, like other states, has approved a limit to the growth of its public sector. But it is a limit with a difference, for it involves a substantial shift of power from localities to the state. For many years, California liberals had an agenda of reform for state and local fiscal relations. Initially it included the state assuming county welfare and health costs. Later it was expanded to include the larger, restructured state role in education described in *Serrano*. The agenda was developed not out of specific concern with property taxes but because liberals perceived they had greater power in the state legislature than in hundreds of local governmental units. The passage of Proposition 13 has caused almost the entire liberal agenda to be *de facto* adopted. The state now pays for most county welfare and health costs, and state support of public schools has increased from about 40 percent of all expenditures prior to Proposition 13 to 67 percent today.

Passing a liberal agenda is not, however, equivalent to achieving a liberal result. Though funds at the state level are sufficiently tight to preclude substantial funding increases in existing programs, the revised fiscal structure has made counties, school districts, and to a lesser extent cities, far more dependent on Sacramento for their year-to-year financing than had previously been the case. In the future, as local preferences change and diverge from one another this centralization of power will become increasingly confining.

Lessons for the rest of us

It is natural to conclude by asking what California can teach the rest of the country. At this point micro-school members are usually at a disadvantage. The story just presented is, after all, a history of only one case. Its numerous idiosyncracies make generalizations difficult.

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Nonetheless it appears that Proposition 13 has been generalized and, in most cases, quite accurately. Few other states had California's precise circumstances: explosive property-tax growth for single-family homes, a potentially large state surplus, and a state government that would not deal with the problem. Nor did many states pass initiatives as drastic as Proposition 13. To the contrary, the rest of the country seemed quite capable of accepting California's general message without developing false conclusions from the details. For example, Massachusetts voted to retain the possibility of different assessment ratios on different kinds of property precisely to avoid the kinds of problems California had.

If there was an exception to this happy process, it was Governor Brown's embrace of the Federal balanced-budget amendment, a particularly illogical conversion. California, like almost every other state, requires a balanced budget in its own constitution. The requirement did nothing to stop a dramatic growth in state revenues and the development of a surplus equal to one-third of state expenditures.

It can be argued that the Federal government would never allow such a surplus to develop, but a second, more serious gap in logic remains. The origin of California's recent dilemma was its rigid, highly reformed property-tax system. The performance of this system in the 1970's re-emphasized what every working politician should know: In government one should not rely too heavily on rules to replace political discretion. Had California's assessors retained some of their pre-1965 authority to set assessments, they could have mediated at least some of the housing inflation. Homeowners would have been less battered. Local governments would have retained most of their powers. To conclude from the California experience that the Federal budget should also be purged of political discretion is to read between the lines what isn't there.

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The new towns program and why it failed

HUGH EVANS AND LLOYD RODWIN

First authorized in 1968, then significantly expanded in 1970, the New Communities program was, according to its former administrator, "reduced to a salvage operation in exactly four years." The program was dismantled in the fall of 1978, three years after even the more modest of its objectives had been jettisoned in a scramble to bolster the precarious financial positions of individual projects.

Under the best of circumstances the New Communities program probably could not have met the grand objectives promised by its less cautious supporters: accommodating in new towns much of an estimated U.S. population increase of 75 million from 1970 to 2000, encouraging more efficient use of resources and methods of design, improving social and economic opportunities for the disadvantaged, and the like. Yet not just the highest hopes were dashed. Despite occasional bold experiments—such as a car-free transportation system devised for Roosevelt Island in New York City, and comprehensive health-care programs in two other projects—the U.S. New Communities program was a disaster whose magnitude surprised even the program's harshest critics.

Throughout the 1950's and 1960's, housing and planning specialists chafed at the narrowness and inadequacies of housing and ur-

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ban programs. They were determined to broaden the basic policies and programs for financial assistance, and worked toward that goal with great persistence, and some success, under Republican as well as Democratic administrations. By 1965 the national housing programs provided categorical grants not only for housing and urban renewal but for public works, community facilities, open space, and mass transportation. Still later, additional and more generous categorical grants were made available for programs involving "area-wide"—alias metropolitan or regional—planning.

Yet the New Community planners sought to go beyond this *ad hoc* Federal assistance for water, sewage, open space, transportation, housing, and community facilities. Many proponents thought building costs could be lowered, and high standards of design promoted, through modern site planning, economies of scale, and utilization of research breakthroughs in technology and public and social services. Others nursed still more ambitious aims: They were persuaded that New Communities could provide diversified mixtures of income, ethnic, and social groups and alternatives to "metropolitan sprawl," while reinforcing government efforts to promote depressed rural or abandoned inner-city areas. Though public understanding and support of these ideas were negligible, these aspirations generated a series of legislative and administrative initiatives that aimed at the building of such communities.

Congress's first major thrust toward New Communities insured mortgage loans for the purchase and improvement of land, in 1965 for large-scale subdivisions, then in 1966 for community development in metropolitan areas. Federal guarantees of debentures issued by private New Community land developers (and not necessarily backed by mortgages) followed in 1968 with Title IV of the Housing and Urban Development Act—an attempt to tap the bond market as a new source of financing for the principal community-development costs, namely, site acquisition and improvements. Title IV also provided supplementary grants in the form of an increment 20 percent above the level of existing categorical grants for water, sewer, and open-space projects, in order to encourage local governments to work closely with New Community developers and make the necessary investments for public facilities.

Four communities were launched under this legislation: Jonathan, Minnesota; St. Charles, Maryland; Park Forest South near Chicago; and Flower Mound, Texas. (See chart, pages 92-93, for a complete listing of New Communities, their size, cost, and current status.) In addition, the Urban Growth and New Community De-

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Federally Assisted New Communities[1]

Community[2]	Location	Date of HUD Commitment	Guarantees Committed ($ millions)	Development Period (Years)	Acres	Projected Population	Population Dec. 1977	Current Status[3]
Jonathan, Minnesota (S)	20 miles SW of Minneapolis	2/70	21.0	20	8,194	50,000	2,860	B
St. Charles Communities, Maryland (S)	25m SE of Washington, D.C.	6/70	38.0	20	7,408	75,000	9,500	A
Park Forest South, Illinois (S)	30m S of Chicago	6/70	30.0	15	8,163	110,000	5,800	B
Flower Mound, Texas (S)	20m NW of Dallas	12/70	18.0	20	5,156	64,000	1,605	C
Maumelle, Arkansas (S)	12m NW of Little Rock	12/70	25.0	20	5,319	45,000	503	A
Cedar-Riverside, Minnesota (NTIT)	Downtown Minneapolis	6/71	24.0	20	101	30,000	3,100	C
Riverton, New York (S)	10m S of Rochester	12/71	23.0	16	2,437	26,000	1,000	C
San Antonio Ranch, Texas (S)	20m NW of San Antonio	2/72	18.0	30	9,318	88,000	—	D

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The Woodlands, Texas (S)	30m N of Houston	4/72	50.0	20	17,000	150,000	3,606	A
Gananda, New York (S)	12m E of Rochester	4/72	22.0	20	4,733	56,000	—	C
Soul City, North Carolina (FS)	45m N of Raleigh	6/72	14.0	20	5,180	44,000	94	A
Harbison, South Carolina (S)	8m NW of Columbia	10/72	13.0	20	1,740	23,000	176	A
Radisson, New York (S)	12m NW of Syracuse	*	—	20	2,670	18,000	900	A
Roosevelt Island, New York (NTIT)	East River between Manhattan & Queens	*	—	7	143	18,000	3,500	A
Shenandoah, Georgia (S)	35m S of Atlanta	2/73	40.0	20	7,200	70,000	110	A
Newsfields, Ohio (S)	7m NW of Dayton	10/73	32.0	20	4,032	40,000	122	C

[1] Source: HUD, New Communities Administration: unpublished memorandum.

[2] S = "satellite" community; NTIT = new-town-in-town; FS = "free-standing" community.

[3] A = Development to continue; B = To be acquired by HUD: development to continue; C = To be acquired by HUD for disposition of assets; D = Development halted, pending resolution of lawsuit.

* New York State Land Development Projects not guaranteed by HUD, but eligible for benefits.

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velopment Act (Title VII of the Housing and Urban Development Act of 1970) extended the Federal guarantees to state and local public organizations acting as New Community developers. To make the incentives even more attractive, it provided for additional "infrastructure" programs (in addition to water, sewer, and open-space projects) which would be eligible for supplementary grants, and authorized three specially targeted grants designed to facilitate financing and innovation, and to cover the high per-capita costs of operating public services for a small number of residents during the early years of development. The Federal government was also empowered to plan and carry out large demonstration projects itself, if it chose to do so.

There were only two public initiatives of any consequence—both programs of the New York State Urban Development Corporation. In part this paucity resulted from widespread skepticism that the national government would play any but a supporting role, and in part from the fact that few state or local agencies had the requisite experience, or were properly organized, to undertake such efforts. But there was as well a widespread preference for the private builder, reinforced by some fairly recent massive failures in public housing and large-scale community development (such as Jersey Meadows) and by some private-sector successes. In particular, numerous large suburban divisions (for example, the Levittowns of New York and New Jersey) and early "new towns"—such as Park Forest in Chicago, built in the 1950's, and Irvine, California, and Columbia, Maryland, in the 1960's—were relatively successful ventures financially, and were developed with little or no assistance from the government.

In any case, the 1968 and 1970 legislation aroused high expectations. The administrators of the program, confident of a positive private-sector response, counted on processing about 10 projects a year, if all went well. In fact, of the nearly 100 applications submitted for Federal assistance over the whole course of the program —many of them from utopians, eccentrics, or devious operators— only 13 private submissions received the "go ahead" from the Administration. Eleven were "satellite communities" on the periphery of metropolitan areas, one a "new-town-in-town," and one a "free-standing community" in an economically depressed rural area.[1] For these projects, Federal guarantees ranging from $5 million to the statutory limit of $50 million were made. (The two New Commu-

[1] In addition, a project near San Antonio, Texas, was offered assistance under Title VII but, mired in a lawsuit, never advanced beyond its initial stages.

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nities undertaken by the New York State Urban Development Corporation rejected the Federal guarantees but sought other benefits of the program.)

In January 1975 the Department of Housing and Urban Development closed the door to further applications. This was not because projected targets had been reached, but in order to concentrate resources on those projects already under way, which were by then clearly in trouble. Following an embarrassing reassessment, HUD decided to recapitalize six projects [2] and acquire the other seven from the original developers. Two, Gananda, New York, and Newfields, Ohio, were considered to lack adequate development potential.

Of the 13 projects, six [3] eventually managed to get off the ground and—after periods of two to six years—reached populations of 1,000 to 6,000. Most of them had constructed a range of community facilities, several had attracted commercial and industrial firms offering job opportunities, and a few provided subsidized housing for moderate-income families. Development in the other seven projects started late, and progressed slowly or not at all.

The loan guarantees for the 13 communities came close to $300 million; other grants and assistance totalled $72 million. No one knows what the total losses will be until the liquidation program is completed. Congress, the Administration, and friends of the program asked, "What happened?" and "Why?"

Six flaws

A spate of studies surveyed the faltering program, including inquiries by Congress, HUD, the Comptroller General, university scholars, and others—including the former administrator. The evidence points to six flaws:

1. *The financial arrangements for New Communities were defective.* The essence of the financial problem of New Communities is that for several years before there is any offsetting income, the developer is burdened with heavy fixed charges both in the form of interest on the massive initial debt incurred for site acquisition and improvement, and from state and local property taxes. While expenses are large and fixed, revenues from the sale and lease of im-

[2] Harbison, South Carolina; Maumelle, Arkansas; St. Charles, Maryland; Shenandoah, Georgia; Soul City, North Carolina; and Woodlands, Texas.
[3] Cedar-Riverside, Minnesota; Jonathan, Minnesota; Park Forest South, Illinois; St. Charles, Maryland; Woodlands, Texas; and Riverton, New York.

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proved land are highly volatile and subject to a host of factors beyond any developer's control. Hence many responsible developers shy away from such investments. The problem therefore is to minimize the gap between fixed charges and income and to reduce the number of years before the project breaks even and begins to show a profit.

The New Communities legislation included a whole complex of measures addressed to specific start-up problems. There were, for example, loan guarantees to assure credit, grant assistance to cover the unusual planning and technical requirements for communities of this nature, and supplementary categorical grants to induce local authorities to make infrastructure investments in areas then without population, revenue, or political power. Similarly, public-service grants compensated localities for providing services to areas as yet without an adequate property-tax base to defray the costs. Repayable interest loans (for periods up to 15 years) covered the shortfall between interest charges and revenues. Yet even with this potpourri of helpful measures, many financial pitfalls remained.

Though Federal guarantees removed the element of risk to lenders (usually insurance companies, investment banks, and later the Federal Financing Bank), little was done to reduce the need for massive initial outlays of capital for land acquisition and infrastructure. The legislation omitted any possibility of freezing land values or holding the land in publicly-funded New Community "land banks," to be released to the developer when required. Moreover, the absence of Federal powers of eminent domain handicapped private developers in securing key "hold-out" parcels—except when states specifically provided such powers. This omission meant that unless there were an ongoing urban-renewal program, large-scale assemblage of in-town locations was virtually precluded. For HUD regulations stipulated that in order to be eligible for assistance, developers must already possess, or have an option on, at least the essential acreage required for the proposed New Community.

A further source of delay and friction was the HUD staff's distrust of developers, compounded in part by the staff's relative inexperience in real-estate development—and an altogether justified suspicion of the rich potential for financial legerdemain. The New Community developers, as is common practice for private developers, formed separate companies for different stages of the development process: for the initial acquisition and assemblage of land parcels, for the subsequent planning, improvement, and preliminary development of the land, and for "above ground" construction, such

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as housing, shopping centers, and industrial buildings.[4] HUD's New Community officials felt a special need to be on guard because under Title VII legislation, guaranteed loans could only be used for land development; "above ground" construction, except where related to public facilities, was specifically excluded.

A risky improvement stage

The most risky period for the developer was the intermediate or improvement stage because of the heavy investments, the unpredictable negotiations with diverse public authorities, complex program requirements, the lack of significant revenues, and the necessity of repaying, according to the terms worked out with the loan institutions and the New Community Development Corporation,[5] the principal sums borrowed plus the interest loans. The legislation was deliberately silent on the matter of repayment in order to permit the tailoring of terms to the particular circumstances of each New Community. Nevertheless, where "front-end" financing was steep—as, for example, when the entire site was acquired at one time or expensive investments for roads or sewage or other facilities had to be undertaken at the outset—and heavy debt charges were incurred, considerable and steady revenues were a prerequisite for repaying the loans.

Since the loans commonly took the form of 20-year debentures or bonds, with provisions for postponement of interest payments during the early years, and with the possibility of extensions of moratoria on repayment, the problem of heavy fixed charges was ameliorated. But not so the debt-service costs, which alone—excluding repayment of principal—were projected to be greater than 60 percent of revenues anticipated to 1975 in eight cases out of twelve, and in practice exceeded 100 percent of revenues in all cases but

[4] There are many reasons for doing this: Institutions lending money for different activities often insist that these be kept separate; also those conducting these operations may want to minimize risk by isolating potential losses, or they may wish to combine entities for tax purposes so that losses in one may be offset against profits in another. On the other hand, HUD officials were wary of the potential abuse of such practices. In the several stages of development, purchases and sales and service contracts were from and to affiliates or subsidiaries of the same companies. In such cases, there is enormous potential for excessive profit as a result of the less-than-arms-length sales between affiliated companies.

[5] The New Community Development Corporation (NCDC) was set up under Section 729 of Title VII to administer guarantees and loans authorized by the 1970 Act. The NCDC has since assumed responsibility for the overall program, and taken over the functions of the now-abolished New Communities Administration.

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two. Thus there was little or no cushion to absorb the impact of changing conditions in the local market and the national economy, errors of market analysis, and other unforeseen contingencies. In addition, the characteristic behavior of developers involved in high-risk activities only compounded the difficulties. The guarantees covered the loan institutions, not the developers, and so experienced developers "mortgaged out," that is, put up the minimal equity and sought the maximum in loans—with the hope of retrieving at the very start of the program whatever funds they put into the venture, not to mention some profits as well. Thus the projections underlying loans tended to underestimate costs, overestimate land values, and to be optimistic about revenues and future contingencies. Records and documentation, on the other hand, were likely to be meager and obscure.

An outside study commissioned by the New Communities Administration found that only two of the developers participating in the New Communities program had extensive experience and national reputations. Most of the developers lacked adequate equity. Though the legislation specified that developers should contribute 20 percent of the equity investment, the New Community Administration—anxious to get a decent-sized program quickly off the ground—did not rigidly enforce this requirement. And even if it had been enforced vigorously, developers could get away with much less by substituting "an urbanization-appraisal increment" on the value of the project's land of up to half of the required equity contribution. At best, therefore, the developers' financial commitments to Title VII operations were tenuous. At Shenandoah, where HUD's initial guarantee amounted to $25 million, the developer put up $10,000 in cash and subordinated debt of $5 million.

In conclusion, the developers borrowed in massive amounts, which increased the burden of fixed charges and reduced the projects' abilities to withstand periods of revenue shortfalls. Costs were systematically underestimated, revenues overestimated, and both the developers and the supervising officials were lax in evaluating the consequences of less favorable assumptions. Subsequent analyses by consultants evaluating the projects on the basis of more realistic assumptions in 1975 and 1976, indicated that six of the communities (Riverton, Gananda, Flower Mound, Jonathan, Shenandoah, and Maumelle) had acquired land "in areas with significant market-acceptance problems," and that six communities (Riverton, Gananda, Park Forest South, Maumelle, Soul City, and Newfields) would never pay back their original investments.

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A lack of acceptance

2. *New communities served no major strategic aims or special constituency.* New Communities require a lot of money. One estimate by the League of New Community Developers puts the capital requirements for 20,000 units—a city of 70,000—at approximately $1.5 billion. If scheduled over a 15-year period, that would approximate $100 million a year. But even if we cut the figures by half, these are substantial sums, and so the number and scale of New Communities could not have been very large even in a country as wealthy as the United States. As many as 50 New Communities with an average population of 100,000 still would have served less than 1.5 million households—clearly a tiny percentage of the expected increase of population. Since the number of New Communities—at least in the first round—was more likely to be in the neighborhood of 10 to 15, they could not have achieved much impact without serving important national- or regional-development aims. Otherwise, as one of the authors of this article wrote in 1971, critics of the program would argue that public investment in these projects had diverted resources from inner-city redevelopment, that our largest central cities were worse off than ever, that the new towns accommodated a tiny fraction of our population growth, and that they would never provide significant alternatives to conventional urban development.

The New Communities actually built invite precisely these attacks. Even had they been fully completed according to plan, they would not have served any substantial middle-class group. They did not extend or reinforce the concept of growth centers; they were not particularly well located; they were not successful financially; nor did they contribute to the reorganization of their metropolitan areas. Except for a handful of middle-income blacks whose entry was facilitated by the newness of the community, neither did they provide any noteworthy advantages to blacks, the poor, or any other disadvantaged groups.

The legislation gained the support of Congress through ingenious bipartisan compromises and skillful maneuvers negotiated by two Congressmen, Thomas Ashley, a Democrat, and William Widnall, a Republican, with Senator John Sparkman, then Chairman of the Senate Banking, Housing, and Urban Affairs Committee. Ashley and Widnall were aided in their efforts by HUD's legislative counsel, who had been deputized to discourage features of the legislation especially distasteful to the Administration.

But the fact is that the New Communities program never had any

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solid constituency in or out of Congress. At best it drew support from a fragmented coalition of planners, architects, a few public administrators, builders, and mayors. (The mayors, who were originally hostile—since New Communities involved no votes and might divert funds from their bailiwicks—were reluctantly persuaded it might help decaying inner cities or the sprawling periphery of their metropolises.) Is it any wonder that whatever political support it had simply evaporated as soon as the program encountered difficulties?

3. *Inadequate arrangements were made to ensure the backing of New Communities by state and local governments.* New Communities confronted local authorities with three problems: whether to provide infrastructure and services for a new population which was an uncertain quantity politically and possibly an unwelcome burden financially; how to finance the necessary roads, water and sewage facilities, schools, and the like, given the needs of the existing population and the constraints imposed by state debt restrictions; and, how to handle these complicated matters with which the localities had little experience.

Nevertheless, state and local cooperation was essential for developers. Delays in providing roads, sewers, water supply, or schools would inflate costs and block or undermine the whole program. And so from the vantage point of the Federal government as well—which had assumed the principal risks—state and local backing was critical. In addition, Federal sponsorship of and investments in New Communities would seem all the more justified if—as state and local cooperation might have made it seem—the New Communities served some paramount regional need. In short, local authorities played an indispensable role as "third partners": The program was sure to founder without their active support and cooperation.

Though one method of guaranteeing local enthusiasm would have been to make the approval of the New Community proposals contingent on their serving some high-priority local or regional concerns, just the opposite assumption was made: that the New Communities should be built according to the judgments and calculus of private entrepreneurs. The necessary collaboration, it was thought, could be negotiated by HUD's New Community planners, with the help of sweeteners provided by the Federal government. This formula generated a maze of problems, later exacerbated by the failure of Federal agencies to make available the promised sweeteners.

We cite only a few examples of the lack of coordination. The

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Genesee Expressway, linking Riverton to downtown Rochester, New York, was merely a recommended component of the Rochester Metropolitan Transportation Study published in 1969—and remained a mere recommendation. At the Flower Mound project, the developer relied heavily on the expected completion of the Mid-Cities Freeway by 1980—although it was never even included in the Texas Highway Department's official plan. And necessary road improvements at Jonathan, Minnesota—despite support from the Federal Highway Administration and assurances of priority ranking from the Minnesota Highway Department—were postponed 10 years. At St. Charles, Maryland, the developer was held up 19 months waiting for the county commissioners first to approve a necessary zoning ordinance and then to grant approval to the New Community.

In addition, the lack of clear agreements with local authorities not only delayed progress but sometimes left the developer to foot the bill for items normally undertaken by public agencies. At Cedar Riverside, a "New-Town-In-Town," the developer expected the Minneapolis Housing and Redevelopment Authority to take responsibility for relocating displaced residents, but after protracted disputes was forced to do so himself to avoid holding up the project further. At Riverton, where improvements were needed for off-site utilities, the developer undertook on behalf of the town of Henrietta the process of grant application to the Environmental Protection Agency, assisted the town in supervising construction, and when grants fell short of costs, wound up paying the difference.

Naive assumptions

4. *There were naive assumptions concerning the political support for, and, therefore, the continuity of the New Communities policy.* It was perhaps natural—but nonetheless dangerous—to assume that the Federal government, because it was providing some backing for New Communities, could guarantee the kind of benevolent and enlightened leadership that would sustain the program through periods of difficulty.

In fact, key programs authorized by Congress were curtailed or never implemented. William Nicoson, the program's administrator, has catalogued how repeated efforts by HUD to acquire authorized funds were thwarted by the Office of Management and Budget (OMB) or by Nixon Administration policy changes. For example, funds to help developers meet interest payments during the early stages of development were initially apportioned but later with-

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drawn. Tax-waiver grants, designed to encourage the participation of public developers, were rejected by OMB on the grounds that public bodies should not be accorded preferential treatment—despite HUD's argument that the grants were needed to reimburse states and localities for the higher interest they would have to pay out as a result of a Treasury Department ruling that Federally guaranteed bonds, issued by states and localities, cannot be tax exempt. Public-service grants to help meet operating costs during the formative stages of New Communities, planning grants to state and regional agencies for the development of rational urban-growth patterns, and planning-assistance grants to encourage innovative approaches among developers, were also turned down by OMB. When Congress nevertheless appropriated $5 million for planning-assistance grants, OMB impounded the funds.

Another blow was the new Federal revenue-sharing policy, which was designed to replace categorical grants for a wide variety of purposes. This had a paralyzing effect. It terminated the basic grants, as well as the supplementary grants for public facilities, which were indispensable to local support and cooperation. In addition, the Administration took advantage of scandals involving profiteering in subsidized private housing to suspend indefinitely subsidies for low- and moderate-income housing (provided under Sections 235 and 236 of the housing legislation) that were essential for a balanced mix of housing in the New Communities.

Nicoson blames bureaucratic inertia for the Administration's attitude, but it is more likely that the decisions reflected the Administration's hostility to a program it never wanted. What better excuse could it offer than the need to cut spending in a period of inflation, and to add that the program was inconsistent with the new revenue-sharing policy? Lacking significant political support, the New Communities program was an easy target.

5. *The legislation assumed a stable national economy, and that should all else fail, the government's special grants and guarantee program could offset the traditional risks of undercapitalization of large-scale community development.* Alas, both those assumptions were wrong. No doubt more is known now than in the past about how to manage a national economy, but the additional knowledge was hardly enough to anticipate or to cope with the double-digit inflation and economic recession that whipsawed the economy from 1973 to 1975. The consequences of this "stagflation" are a matter of record. Quadrupled oil prices boosted the costs to builders of fuel, asphalt, and plastics; other material costs followed the upward

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spiral. Removal of the Construction Stabilization Committee controls in April 1974 led to widespread wage increases. Housing costs rose 11 percent in 1973 and nearly 20 percent in 1974; homebuyers found mortgages more expensive and harder to come by. Sales prices increased and sales sharply declined.

Developers seeking loans for industrial and commercial purposes —activities not covered by the initial HUD loan guarantees—found them almost unobtainable, even at record-high interest rates. The downturn in the property market prompted investors to withdraw their funds from Real Estate Investment Trusts, which had been ready sources for loans. Most serious of all, the recession forced business firms to postpone or cancel plans for opening plants in the New Communities.

The sharp drop in sales and rentals, coupled with heavy front-end costs and cash-flow projections wildly off the mark, left developers with no way of meeting their fixed charges. Short of funds, with frozen long-term investments and no short-term revenues, they faced reorganization or bankruptcy as the only alternatives. This in turn raised the perennial question of New Towns programs: whether even big private builders could ever shoulder the short- and intermediate-term costs of such massive enterprises.

6. *With the private sector cast in the leading role, the main social aims of the program were jeopardized.* It seemed only fair to ask for a significant *quid pro quo* from the private developers if they were to receive public loans and subsidies. But it is common in such cases for the list of requirements to expand, as government officials overlook the fact that private developers' principal concern must be profitability. The results are often frustration and bitterness. Failure to meet commitments is regarded by the officials as *prima facie* evidence of bad faith, while, on the other hand, insistence on the conditions simply confirms the hard-pressed developer's sense that he is being harassed by simpletons and bureaucrats who do not understand the most elementary requirements of business survival. Finally, apprehensive officials and outsiders often fear that a relaxation of requirements will be taken as a signal that all sorts of hanky-panky will be tolerated. Alas, there is evidence for each of these views.

One of the aims of the program, for example, was to "encourage the fullest utilization of the economic potential of the older central cities, smaller towns, and rural communities." However, the private developers' criteria for choosing a location were based on market demand (for housing, and commercial and industrial facilities), and on the availability of attractive, reasonably priced land (preferably

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land already in their possession), and on its proximity to already developed areas (thus minimizing development costs). Inner-city locations—in the absence of land-cost "writedowns" under urban renewal—tended to be ruled out by high land costs and land-assemblage problems, distant rural sites by inadequate infrastructure, and lagging regions by their economic and social unattractiveness. The developers' preferred locations were fast-growing metropolises—that is, the areas least in need of Federal assistance.[6]

The Title VII legislation also stipulated that New Communities should make "substantial provision for housing within the means of persons of low and moderate income" and aim to "increase for all persons, particularly members of minority groups, the available choices of location for living and working." The case for providing Federal assistance to New Communities on the periphery of metropolitan areas was based in part on the anticipated potential of such developments to help the disadvantaged population of these big, fast-growing regions, but this view ignored the pressures on the private builder for high yield and relative financial safety, for more middle- than low-income housing, and for prudence with regard to controversial and potentially destabilizing mixtures of families with different social or ethnic backgrounds.

The New Communities Administration's goal for low- and moderate-income housing was 27 percent of all units, and on the basis of housing completed by October 1976 they claimed to be on target. But two-thirds of these units were at Cedar-Riverside and Roosevelt Island, the two projects located in inner-city areas, where most of the disadvantaged are living anyway. With the exception of Park Forest South, which in 1974 had a black population of 16.4%, considerably higher than most Chicago suburbs, the racial mix of Title VII communities was reported as being "roughly parallel to the minority profile of the metropolitan area as modified by the specific area in which the new town is located." In short, Federally assisted New Communities in suburban areas did not much widen for the

[6] As one might have predicted, most of the New Communities were in suburban areas. With the exception of the privately developed Cedar-Riverside project, and Roosevelt Island, developed by the New York Urban Development Corporation, none of the New Communities was in-town. Only one of the New Communities, Soul City in North Carolina—a project beset with severe financial difficulties because of its lack of eminent-domain powers—tried to serve a lagging region. One cause of this failure to build non-suburban projects was that no provision was made in the legislation for Federal help in establishing an economic base for New Communities so that they might function as growth centers. New Communities, it should be added, can hardly be blamed for not serving the aims of a national urban policy when the government never formulated one.

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poor and disadvantaged the choice of a place in which to live and work.

HUD regulations also required developers to "provide for an ongoing planning and implementation process with local public bodies, residents, community groups, and private agencies . . ." The private developers, however—anxious to preserve the long-range trajectory of development and to protect the financial viability of projects—set up community associations in such a way as to ensure their own controlling interest until the land was substantially developed. Partly because of the inadequacy of these processes and partly because of their inadequate representation in the elected chambers of county or municipal government, the main recourse of residents with grievances was to dilatory and expensive legal procedures. This is what happened at Park Forest South, where lengthy disputes broke out over the preservation of woodlands, and at San Antonio Ranch in Texas, where a lawsuit—involving conservationists concerned about possible pollution of the main source of water—effectively torpedoed the project before it started.

When are New Communities justified?

We do not conclude that no case can be made for a New Communities program. But clearly New Communities are not panaceas for the problems of housing costs, social integration, urban growth, or lagging regions—if for no other reason than that of the limited scale of possible efforts. In no country has the number and the size of New Communities been large enough to accommodate more than a miniscule fraction of the population increases and economic growth of cities and regions. And given the size of investment in existing cities and the sheer difficulty and cost of building New Communities, this situation will not change.

We should also know now that building new towns is highly unlikely to be a viable proposition for the private sector. Because they require enormous outlays of capital with almost no prospect of significant financial returns for many years, New Communities have to be built quickly and efficiently to keep costs, prices, and even subsidies reasonable. But they cannot be built without complicated and very time-consuming and costly collaboration between the developers and local, state, and Federal officials, and between the New Community planners and the residents of the area. Add also the enormous difficulties of raising sufficient capital even by the largest private developers, break-even and profit-making points some 10 to

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20 years in the future, fluctuations in the economy, and the twists and turns of local and Federal policies, and it becomes clear why the odds for privately-sponsored New Communities are tilted heavily toward financial disaster.

Surprising as it may be, we do not conclude from the experience of Title VII that New Communities are *necessarily* financial losers, though they are most unlikely to be viable propositions for the private sector. But in circumstances where there is an assured economic base, some form of quasi-public development corporation—able to carry the heavy waiting costs of the long and risky development period—could be established. Were this supplemented with measures for "land banking" or freezing land prices, it should be possible to reduce considerably the initial front-end investment costs and to obtain reasonable returns from some middle-class residential areas, from commercial and other economic activities, and from the increases in land values.

Nor ought one to suppose that public-development corporations need exclude the private sector from the development of New Communities, although the roles of the public and private actors would have to be redefined. The private sector would be largely relieved of functions properly the responsibility of public authorities and would be left to do what it knows best: develop real estate. Leadership would come from the public agency, which would be better placed to pursue the social objectives of the program, to obtain access to the substantial funds and subsidies required, to coordinate planning between Federal, state, and local authorities, and to recapture much of the increase in land values arising from public investments.

It goes almost without saying that the demise of the 1970 version of the New Communities program—and the lack of interest in or backing for a national urban policy—will smother future new-town efforts, at least for a decade or so. But the idea of building new towns will revive, for there are circumstances where more conventional forms of urban growth are impossible or inappropriate. For example, in the event of a need for speedy development of an exceptional resource in an undeveloped region, a New Community could help attract the firms and the high-level staffs and labor force required for the undertakings (as, for example, in Los Alamos, New Mexico). A second opportunity for the new-town concept would be the building of a new capital city (as, for instance, the recent decision to shift the capital of Alaska from Juneau to a site near Anchorage), a decision sure to generate many extraordinary prob-

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lems of site planning, urban design, housing shortages, soaring rents and sales prices, increases in land values, and land speculation. Still another future project might be a "New-Town-In-Town" involving the rehabilitation of an extensive problem-ridden area, such as the South Bronx in New York City.

By offering these possibilities, New Communities legislation adds a string to the bow of planners, though, alas, a frail one. There is little prospect of New Communities serving the high-priority needs of our existing cities, and especially of the poor and disadvantaged populations who reside in them—much less of serving as an "essay in civilization," as their most ardent proponents once envisioned. More's the pity then: For surely New Communities are the stuff idealists' dreams are made of.

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CURRENT READING

The Distorted Unemployment Statistics

Economists have been puzzling for some time now over the anomalous behavior of the unemployment rate. The rate is supposed to be responsive to cyclical changes in the economy, yet in recent years it has failed to decline in proportion to the number of jobs created. This has led many economists to suspect that non-cyclical factors, such as changes in the composition of the labor force, are distorting unemployment statistics. *Monthly Labor Review* published four articles in its March 1979 issue exploring the effects of several of these non-cyclical factors—demographic changes, government policies, and changes in the methods used to count the unemployed—and a loose consensus emerged. These factors have indeed artificially increased the unemployment rate, in some cases to a significant degree, but because they all interact and overlap in ways that are not well understood, it is impossible to estimate their collective impact.

By far the most significant of the non-cyclical factors is demographic change. In the lead article, Paul O. Flaim describes his new research, in which he looked at two components of demographic change: changes in the age structure of the population and changes in the labor-force participation rates of the different groups. He divided the labor force into 22 groups identified by age and sex—a finer breakdown than any done before—and essentially fixed the weight of these groups at their 1957 levels.

Recomputing the 1976 unemployment rate using the 1957 population distribution, taking the unemployment rate for each of the 22 groups in 1976 and making some adjustment for "interaction" effects, he found that the overall 1976 rate was reduced by a 0.8 percentage point. In other words, the 1976 unemployment rate would have been 6.88 percent rather than 7.68 percent if the composition of the population had been the same as in 1957.

The bulk of the increase in unemployment due to higher labor-force participation rates is clearly attributable to the influx of maturing "baby-boom" youths into the labor force, as Glenn G. Cain points out in another article. Surprisingly, when Flaim added race to the standardization for 1957-1976, he found practically no effect

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on unemployment rates. The explanation is to be found mainly in the declining participation rates of black youths. "While this group, which has extremely high unemployment rates, did account for a larger share of the working-age *population* in the mid-1970's than in the mid-1950's, its proportion of the total youth *labor force* actually had declined over this period," he writes.

Another surprising finding was that the entrance of more and more women into the labor force, which is widely believed to have increased the unemployment rate, has in fact had very little effect. The reason is that most of the new entrants are adult women, who have an unemployment rate lower than the overall rate.

Since the youth proportion of the population can be expected to shrink in the 1980's, unemployment rates will certainly decline. Flaim concludes that, "by the end of the next decade, the changes in the makeup of the labor force will yield an overall unemployment rate at least half a percentage point lower than it would have been under 1977 conditions. And much of this improvement should come about during the early 1980's."

What, then, of the effect of the minimum wage on youth unemployment? Flaim refers to studies by Jacob Mincer, Philip Cagan, and Edward Gramlich, but hesitates to settle on a number. Cain is also skeptical. In the third article, Joseph Antos, Wesley Mellow, and Jack E. Triplett raise still more technical objections. In sum, all three articles conclude that minimum-wage laws have a definite, but small and as yet unquantifiable, effect on youth unemployment. The consensus appears to be that the best existing estimate is Philip Cagan's —a 0.43 percentage-point increase from 1956-1973, and a 0.63 percentage-point increase for 1956-1974—but, again, the endorsements are heavily qualified. The barrier to accurate measurement is the absence of a sufficiently sophisticated statistical technique.

EVEN greater technical problems interfere with measures of other effects. The formal job-seeking requirements recently attached to welfare programs (AFDC and food stamps), for instance, apply to people who in many cases would otherwise be out of the labor force entirely, thus boosting the unemployment rate. But it is difficult to determine just how many people are actually out of the labor force to begin with. Flaim quotes an estimate by Kenneth Clarkson and Roger Meiners that the job-seeking requirement adds as much as 2.4 percentage points to unemployment, but rejects it as too high, as do all the other *Monthly Labor Review* authors—including Richard M. Devens, author of the fourth article. Flaim refers to a number of studies—by Alfred Tella, Cornelia Motheral and Rebecca Summerville, and Arthur Blakemore—which conclude that the requirements add from 0.2 to 0.4 percentage point to the unemployment rate.

As Cain points out, changes in welfare programs—such as increased benefits—usually have two significant effects on unemployment. They increase the duration and frequency of time spent

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between jobs and they weaken the link between unemployment and hardship. Changes in unemployment insurance have essentially the same effects, and they are equally difficult to measure. Flaim writes that the authors of unemployment-insurance studies "either refrain from quantifying the net effect or arrive at results that, perhaps not surprisingly, differ significantly." However, he points out that most studies point to about a 0.2 to 0.4 percentage-point increase since 1967. Two factors seem to account for this increase. Benefit levels have increased as a proportion of the gross weekly wage from 0.35 in 1967 to as much as 0.55 in 1975 if payroll taxes are taken into account, according to Martin Feldstein, and this leads to more prolonged periods of unemployment. In another study by Feldstein and Martin Bailey, quoted by Flaim, it was found that firms already paying the maximum insurance rate could use the unemployment-insurance program to subsidize layoffs without incurring additional cost, thus further increasing the frequency of unemployment.

THERE are a number of other non-cyclical factors that exert small or virtually unmeasurable influences on the unemployment rate. There are indications, for instance, that the increase in the proportion of families with more than one worker—from 38 percent in 1960 to almost 50 percent in 1977—lengthens the period of unemployment, but as yet there is no accurate estimate of this effect. Several changes in the methods used to count the unemployed have also had effects, but Flaim concludes that they are all offsetting and balance out to no net effect. Finally, there are government programs that *lower* the unemployment statistics. Because most people in employment-training programs are counted as "employed" and because some may also have left jobs to enter the programs (thus opening positions for others) the unemployment rate goes down. When "substitution"—simply replacing some workers with Federally funded workers—is taken into account, the reduction in the unemployment rate attributable to this factor turns out to be about 0.3 percentage point for 1976.

Unfortunately, it remains impossible to arrive at a single estimate of the distortions produced by this array of influences. But because they threaten the validity of the unemployment rate as an economic indicator, economists have looked for ways to adjust for them. One possibility is to substitute an employment-to-population ratio for the present unemployment measure. The ratio would have the advantages, according to its proponents, of simplicity, objectivity, and more reliable correlation with other economic indicators, such as inflation. Cain argues for a simple adjustment of the unemployment rate to take into account the significant effects of the demographic changes described by Flaim:

> It would seem that the use of an age-adjusted unemployment rate would improve the concept for its basic purpose of measuring economic performance, enhance its secondary use as a measure of hardship, and would command widespread understanding and acceptance by tech-

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nicians and the public. Age is a demographic variable that, compared to sex and race, has clear causal connections to unemployment and is much less value-loaded.

Whatever the merits of the various arguments, though, it seems clear that economists will be unable to rest, and certainly unable to agree with one another, until more accurate and reliable statistical techniques are developed.

—*Steven Lagerfeld*

Divide and Conquer

After two years of debate and a half-million dollars in expenditures, the Federal bureaucracy has decided how to watch over the sea turtle, according to William J. Broad, writing in *Science* (March 16, 1979):

> The Department of the Interior's Fish and Wildlife Service (FWS) wanted all the glory. But so did the Commerce Department's National Oceanic and Atmospheric Administration (NOAA). In the end, it took a compromise to make everyone happy—everyone, that is, except possibly the sea turtle. FWS now watches over the endangered reptile while it is on shore, and NOAA while it is in the ocean.

Why They Marry Late: "Lead" and "Lag"

Find a sociological puzzle, and one gets, usually, a slew of esoteric explanations, couched, of course, in opaque sociological jargon. Take the question which has befuddled a number of commentators recently: Why is it that women today seem to be marrying later than before? We shall not try to list all the ingenious explanations that have been advanced, from the rise of women's liberation to the increasing proportion of open homosexuality, male and female. Suffice to say that simple statistics, once understood, provide the most likely explanations. Here is Paul C. Glick, of the U.S. Bureau of the Census, writing in *Current Population Reports*:

> One of the tangible factors that probably helps to explain the increasing postponement of marriage is the 5-to-10-percent excess of women as compared with men during recent years in those ages when most first marriages occur (18 to 24 years for women and 20 to 26 years for men). This imbalance is a consequence of past fluctuations in the birth rate. For example, women born in 1947 after the baby boom had begun were ready to marry in 20 years, but the men they were most likely to marry were born in 1944 or 1945 (about one-half in each year) when the birth rate was still low; these men were about 8 percent less numerous than the 20-year-old women. (By contrast, girls who were born during the last 15 years, while the birth rate has been declining, will be scarce as compared with eligible men when they reach the main age for marriage.)

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Brewers at Loggerheads

The beer industry, which one imagines to be the province of quiet little brewmasters, has been growing increasingly competitive in recent years, producing more than a few spectacles of litigation. In the latest suit, described by Eliot Marshall in *Science* (February 23, 1979), the Miller Brewing Company has produced a one-inch-thick brief seeking to have the Federal Trade Commission bar its main competitor, industry-leader Anheuser-Busch, from describing its products with the words "natural" or "naturally." Miller's brief went into great detail to prove the point:

> The description, spread abroad in a Miller press release handed out simultaneously with the filing of the brief, takes two vicious swipes at the Anheuser-Busch . . . beers. One goes right for the jugular.
>
> As far as Budweiser is concerned, the jugular is something described on its labels as "beechwood ageing" (sic), a unique brewing process whose name evokes an image of wooden casks resting in an unhurried, tradition-bound brewing cellar. As the label says, this method creates a taste "you will find in no other beer." Miller's lawyers would like to spike the image: "We seriously doubt," they wrote, "that consumers understand that 'beechwood aging' consists of dumping chemically treated lumber into a glass-lined or stainless-steel beer storage tank." Miller's "understanding" is that its competitor boils beechwood slats (18 by 2 by ¼ inches) in baking soda and then drops them in the brewing vat for hours at a time to create the effect it calls beechwood aging.

The Inequality of Cities

Are all cities within particular nations essentially alike and therefore equally in crisis? In an article for the *European Studies Newsletter* (January/February 1979), Robert C. Fried argued that the assumption of urban uniformity, which often underlies the notion of "urban crisis," deserves to be reconsidered.

> In proportion to the population, there are twice as many robberies in Stockholm as in Gothenburg, in Zurich as in Bern, in Berlin as in Bonn; there are three times as many in New York as in Philadelphia, in Liverpool as in Sheffield, in Sapporo as in Nagoya; there are four times as many in Vienna as in Linz; there are six times as many in Vancouver as in Toronto.
>
> Again in proportion to population, New York has twice as many dentists as Houston; Vancouver has twice as many as Montreal; Osaka has twice as many as Yokohama; Munich has twice as many as Dortmund; Vienna has twice as many as Linz; and Rome has twice as many as Naples.
>
> The infant death rate is 30-percent higher in Yokohama than in Tokyo; 40-percent higher in Lille than in Paris; 50-percent higher in Washington, D.C. than in Los Angeles; 50-percent higher in Naples than in Milan; 50-percent higher in Malmo than in Stockholm; 90-per-

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cent higher in Manchester than in Leeds; 200-percent higher in Geneva than in Bern.

The Smoking Paradox

It has become something of a truism to say that the effect of public regulation of private industry often turns out contrary to the regulators' intent and the public good. A social scientist named Gideon Doran provides us with a refreshing reminder that truisms can be true in his recent book, *The Smoking Paradox* (Abt Books, 1979). A straightforward and clearly written case study of regulation in the cigarette industry, *The Smoking Paradox* shows in detail how regulation, far from protecting the consumer from the health hazards of tobacco, has ultimately benefited only the industry.

Since the first official indictment of cigarettes, the *Surgeon General's Report* of 1964, the industry has been taken through three major regulatory phases. First, there was the health warning which, beginning in 1965, had to be placed on all cigarette packages and eventually (three years later) on all cigarette advertisements. This warning, in the toned-down language that was finally agreed upon, had almost no effect on the smoking population. In fact, in 1965 "cigarette consumption rose about 3.5 percent, passing 1963's total by about seven billion units." The main effect on the industry was to protect cigarette manufacturers from individual lawsuits—the warning having been given, cancer victims were deprived of any cause for complaint.

The next phase was slightly more successful. Appealing to the Fairness Doctrine, a law designed to give opposing sides a chance to respond to controversial issues, cigarette opponents in 1968 gained access to free television time for anti-cigarette commercials. Although the cigarette industry still prospered, the opposing messages did help create an anti-cigarette climate of opinion and cause a decline in cigarette consumption of almost two billion packages by 1970.

But the anti-cigarette forces were not satisfied and in 1971, following the precedent of a number of European countries, they succeeded in banning cigarette commercials from the airways. This ban immediately eliminated most of the anti-cigarette messages as well. With no more cigarette commercials, there was no more controversy on the airways and the Fairness Doctrine could no longer be applied. As a result, the decline in cigarette consumption quickly levelled off. Even more ironic, the industry's television advertising had done little to affect the total number of cigarette smokers to begin with. Cigarettes, as the industry had long known, had reached market maturity, so the companies used television advertising to compete for market shares rather than as a means of increasing the market as a whole. Thus the major effect of the television ban on the industry was to make it more difficult for new companies to break into the market. And the oligopolistic cigarette industry, con-

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centrating its advertising money in the print media, has been thriving as never before. Ranked low among profitable American industries in the 1960's, it "catapulted to the top" in the 1970's.

This regulatory failure could have been foreseen, since the European examples had already shown methods such as advertising bans to be clumsy and ineffective. However, the political forces behind regulation were so numerous and diverse that, unable to determine a more rational strategy, they settled for a victory that belongs to the venerable tradition of King Pyrrhus. And, Professor Doran says, short of banning cigarettes altogether, no other regulatory innovations can promise better results. The answer for those who would save their fellows from cancer is not to regulate, he concludes, but to inform the public of the dangers as vigorously as possible and allow it to make its own decision.

Safe At Any Speed?

Two items in *The New Statesman* (January 19, 1979) heralded the arrival of consumer activism in England.

> The Royal Society for the Prevention of Accidents' *Car on the Road* bulletin reports on the case of a driver who was stopped and breathalysed by the police in Kent after he had drunk six pints of lager. He passed the breath test, but wrote an angry letter to his local consumer protection department claiming that the lager was under strength. —*The Scotsman* (Harry Milne)
>
> A man who took his son on a Christmas steam railway ride has complained that there were no fairies on the train. The "Santa Specials" were organised by the Nene Valley Railway on a stretch of private track near Peterborough, and posters for the excursions said that Father Christmas would hand out presents and that "elves, pixies, and fairies" would be on the trains. A complaint has now been made to the county consumer-protection department that only elves and pixies were present. —*Guardian* (D. Cobell)

Prosperity is Just Around the . . . Statistic

The same changes in the structure of the population that are distorting unemployment statistics are also affecting the government's measures of income growth. Roger Herriot and Andrea Haines reviewed several of these statistics in *Public Opinion* (January/February 1979) and showed how they produced the "optical illusion" of greatly reduced prosperity in the 1970's.

> For instance, the government says that on average, household income rose by a total of $260 from 1970-1976; that's true, but as we shall try to explain below, it masks the fact that for individual household types, the income rise actually came to about $870 over that period—three times the government's "average."
>
> If all this sounds like mumbo-jumbo, let's consider a simple exam-

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ple. Suppose Mr. Jones employs three workers with varying levels of experience whom he pays $100, $200, and $300 a week, respectively. The average salary for the employees is thus $200 a week. Due to expansion of business, Mr. Jones hires three additional employees at $100 apiece. Clearly, no individual has suffered a loss in income; in fact, if the three new employees were previously without jobs, they are probably better off. But look at what has happened to the average income of Mr. Jones's employees: It has dropped to $150—a dramatic loss of 25 percent, even though all of the employees are at least as well off as before! The key is the *compositional change* in the workforce; that is what creates the illusion that everyone is worse off.

Essentially, that same thing has happened to the American economy in the 1970's. There have been important compositional changes in the workforce, caused in large measure by demographic facts of enduring significance in our society: a low birth rate during the Depression of the 1930's, the baby boom following World War II, and the birth dearth in the 1970's. . . . The baby boom has . . . come and gone. And it has left an indelible mark on the age structure of the population and on the age profile of the workforce. In the 1970's, its major effect was felt in the vast numbers of young men and women of the "baby boom" era who began arriving in the labor force. . . .

The bulk of the increase in the labor force was attributable to a 26.2-percent increase in the number of male workers between the ages of 20 and 34 and a 38.2-percent increase in the number of female workers in that age bracket. During that same period, the number of males in the workforce between the ages of 35 and 54 increased by only 1.3 percent.

The bulge in the labor force at the younger end of the scale has had a noticeable effect on income levels and for rather obvious reasons. It is generally true that workers in our society go through a life cycle of income—younger workers are at the low end of the ladder, people enjoy their peak earning years from the age of 35 through 54, and from 55 on, as people begin to retire, income drops again. . . . That same age-and-income cycle has prevailed during the 1970's.

When one couples that income cycle with the compositional changes in the workforce, some interesting things happen . . . The average income for every group—except males from the ages of 20 to 34—increased appreciably over the 1970-1976 period. Males between the ages of 35 and 54, for example, increased their income on an average of $503. Overall, the average increase over the six-year period for each age group of income recipients, after inflation, was about $270.

Glued to the "Tube" in England?

Amidst all the sound and fury about television, the British Broadcasting Corporation has been quietly conducting surveys for the last 40 years to determine the effects of the dread machine on people's daily lives. The latest results, as reported by David White in *New Society* (December 21/28, 1978), indicate that television has only a

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marginal impact on what people do with their time. But these changes—which may not be entirely attributable to television—do say something about television and the English way of life.

The day now seems to begin later and last longer. In 1939, 12 percent of the population got up between 6 and 6:30 and 42 percent got up between 7 and 7:30, but by 1975 the proportions for early and later risers had declined to 9 and 31 percent, respectively. And since 1961 people have been going to bed about a half hour later. At least 70 percent of adults were in bed by 11:30 on weekdays in 1939, 1948, and 1961. The 1975 survey shows only 42 percent in bed at that time, and a third still awake at midnight, compared to an average of 15 percent for the other years. The BBC says this is because it has extended its programming. But not everybody is staying up to watch the British equivalent of "The Tonight Show": Children are staying up a full hour later than before. In 1975, only 30 percent of 5 to 9 year olds were in bed by 9, compared to 90 percent of their counterparts in 1953.

Finally, some activities are returning to their pre-television patterns. In the early 1950's, 80 percent of those who had televisions stayed glued to the "tube" on winter Saturday nights, while two-thirds of the tube-less stayed home. Now that nearly everybody has television, a third of the population is again going out on Saturday nights, perhaps because the novelty of television has worn off.

Washington's New Growth Industry

The number of consultants in Washington is growing by leaps and bounds. Donald Lambro explained in an article for *Policy Review* (Winter 1979) that Federal agencies have an incentive to farm out work to consultants because they are not included under personnel ceilings. While this exclusion also makes it difficult to arrive at a full accounting of their number or the value of their contracts, it is clear, according to Lambro, that consulting has become a new "growth industry."

> There are no accurate figures on the number of consulting firms doing business with the Federal government. One partial survey found that 64 departments and agencies were paying consultants nearly $2 billion a year under some 34,000 contracts. Last year, the government placed some 18,000 consultants on its payroll, but this represents only the tip of an unseen iceberg. It is estimated that if consulting firms and their employees were factored in, in addition to state and local employees whose salaries are paid by the national government, the Federal government's true employee level would be approximately three to four million more than the nearly three million now officially given. Incredible as it may seem, the Federal government has only the vaguest idea of how many workers in this country are paid by Federal funds. According to Spencer Rich (writing in *The Washington Post*, July 18, 1978, p. A1), a good estimate would be that from three- to four-million

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persons are paid by the Federal government through consulting contracts, research grants, and payments made for the wages of state and local government employees. Secretary Joseph Califano of HEW recently testified to the Senate Appropriations Committee that his Department pays the salaries of 980,217 persons who work for private think tanks, universities, and state and local governments. This is in addition to the 144,256 "regular" HEW employees. The Department of Defense estimates that it pays the salaries of an additional 2,050,000 people through consulting contracts and the like. This figure does not include 2,049,000 military personnel who are also Federal employees.

An Expensive Housing Experiment

Will poor families move to better housing if simply given cash grants by the Federal government, with no strings attached, to help pay their rents? The Department of Housing and Urban Development spent $180 million to find out, and as David Walker reported in *New Society* (December 21/28, 1978), it turns out that most will not.

The HUD experiment, launched four years ago under the Nixon Administration, tested the view that cash grants to low-income families would not only cost less than public housing, but would also stimulate private house-building and encourage a . . . shift in population from city centers to the suburbs. Instead, the study showed that extra cash grants to families at or around the poverty level were spent almost entirely on goods and services other than housing.

A control group of poor families, offered money on condition they used it on housing that met certain minimum standards, largely boycotted the scheme. Direct cash grants produced neither rent inflation nor any appreciable boom in house building.

Donna Shalala, Assistant Secretary of HUD, announced before a critical public-assistance subcommittee of the U.S. Senate: "We have learned that when families are given dollars which have no strings attached, very few of the dollars will go to purchase housing over and beyond what would have been purchased anyhow. On the other hand, if housing requirements are attached to those dollars, results show that families spend three to four times more of their allowances on housing than they would without such requirements."

The HUD study found that at least half the poor and near-poor families in the U.S. already live in housing that meets minimum Federal standards of "safety, sanitary conditions, and decency"—and so have no pressing material incentive to move.

Engels Vindicated?

The inexorable workings of history may have vindicated Friedrich Engels, Jr. in his decision to leave the family business to join Karl Marx in studying political economy. According to the *Financial*

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Times' World Business Weekly (March 5, 1979), the Engels firm has succumbed—perhaps a bit belatedly—to historic inevitability, although not exactly as predicted by Engels and Marx.

> [T]he cotton mill established by Friedrich Engels Sr. in Engelskirchen, near Cologne, West Germany, has finally ground to a halt. The elder Engels was the father of the political theorist who was Karl Marx's closest comrade, and the mill, along with another in Manchester, was the prime source of support for Friedrich Jr. and often for Marx himself. The younger Engels had refused to assume command of the paternal factory, calling it "bourgeois."
>
> The present owner, a great-grandson of Friedrich's brother, is selling the 142-year-old mill to a real-estate developer. As Marx would no doubt have foreseen, the firm was no longer turning a profit and since 1960 has gradually reduced its labor force from 350 to 35. The workers' consolation, however, comes to more than thoughts of the irresistible forces of the Marxist dialectic. They are being compensated with sums of up to $8,100.

Coal Revisited

In a recent "Current Reading" section, *The Public Interest* (Winter 1979) printed an excerpt from *Fortune* describing how it was decided to use tall smokestacks and "scrubbers" to combat pollution generated by coal-burning plants. According to *Fortune* writer Tom Alexander, the decision was made despite the inability of scientists to determine precisely how this pollution damages health; later research found that the chosen tactics may have done more to aggravate the problem than solve it. Now it appears that overzealousness has struck again in a pollution-control case—this time with a new twist. Robert W. Crandall, writing in *The Brookings Newsletter* (Winter 1979), described how the standards for new coal-burning utility plants were set.

> There is no clearer example of this political aspect of regulation than EPA's proposed standards for new coal-fired utility boilers. In the summer of 1977, the Administration joined Midwestern coal miners and environmentalists in an unlikely coalition to persuade the Congress to amend the Clean Air Act to require electric utilities to install the best available continuous-emission-reduction technology in all new plants. In practice, the amendment calls upon EPA to require the scrubbing of stack gases from new plants regardless of the sulfur content of the coal they burn. Obviously this reduces the incentive for utilities in the Midwest to use the abundant supplies of low-sulfur coal available in the West. Since the new-plant standard does not limit sulfur *emissions*, but simply requires removal of a large proportion of the sulfur emitted, utilities will burn much higher sulfur coal from nearby regions, which is cheaper. In many cases, the total cost of the full-scrubbing requirement will substantially exceed the cost of burning low-sulfur coal and partially treating the stack gases.

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Why did the Congress pass this amendment? Because the Midwestern coal miners feared that new-plant standards for sulfur dioxide emissions would lead to displacement of Midwestern coal by low-sulfur Western coal, and the Administration supported them in asserting this fear. Subsequently the administrator of EPA found that no standard, contemplated or in existence, would endanger coal mining in the Midwest; every projection made by his staff showed that Midwestern coal mining will expand between 1976 and 1990. Yet the best-available-technology requirement remains.

How much will the full-scrubbing strategy for reducing coal emissions cost? Present EPA standards for existing sources entail costs of less than $200 per ton of sulfur dioxide removed. The full-scrubbing requirement will reduce emissions by 2.5 million tons in 1990 at an annual cost of $2 billion (1976) dollars. If EPA were simply to set a performance standard or tighten existing standards to obtain the same 2.5-million-ton reduction in emissions, it probably could reduce the cost of removal by one-half, from $800 a ton to $400 a ton. The net annual saving would be $1 billion by 1990.

In short, we are being asked to pay $1 billion a year more for electricity within the next 12 years to subsidize Midwestern coal miners whose jobs are not threatened in any case. Since the full-scrubbing standard will increase employment in Midwestern and Eastern mines by only 13,500 jobs—in a dirty, hazardous occupation—the cost of creating each job may exceed $70,000 a year.

Inaccurate Inflation Indicators?

While it is clear enough that inflation is still with us, it is not so clear what the "true" rate is. The government publishes several inflation indicators, but they are seldom in agreement because they define the problem in different ways. According to *Business Week* (May 14, 1979), these continuing disparities have touched off a debate among economists which has also revealed some of the shortcomings of the present indicators.

Unfortunately, in a world of rapid inflation there is no accurate way of measuring it. The very process of inflation brings about changes in economic behavior that makes measuring the speed of price increases correctly an almost impossible task.

Nevertheless, the evidence suggests that the widely used consumer price index is probably overstating inflation. And because so many workers and retirees are indexed to the CPI, this overstatement builds additional inflation into the economy.

Each time the Bureau of Labor Statistics' consumer price index rises by 1 percent, some 9 million workers covered by cost-of-living-adjustment clauses receive an extra 5¢ to 9¢ per hour. And a variety of government payments, including Social Security benefits, going to 35 million Americans, and Federal pensions, going to 1.5 million retirees, are indexed to inflation. . . .

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The monthly CPI and the quarterly GNP deflators frequently tell different stories. In the first quarter of this year, the CPI increased at a 12.7-percent annual rate, while the implicit price deflator showed an 8.7-percent rise. Although this difference is unusually large, the CPI and the deflator almost never coincide, because they measure different things in different ways. The CPI is a price index for a fixed market-basket of goods, based on a 1972-73 survey of national consumption patterns. The GNP deflator covers all prices in the economy, including those for investment goods and exports, and, because of the way in which it is calculated, reflects changes in the composition of national output as well as pure price movements.

A measure more comparable to the CPI is the deflator for personal consumption expenditures, but even here the discrepancy is large. . . . The deflator takes into account changes in actual consumption patterns, while the CPI sticks with the assumption of its fixed market-basket that consumers do not substitute less-expensive goods for products whose prices are rising rapidly. For example, despite the fact that soaring prices have reduced beef consumption markedly, the CPI continues to assume that consumers spend 15 percent of their food budget on beef and veal. The weights assigned to CPI components are never changed, except at major revisions of the index, which come at about 10-year intervals.

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Enslaving Souls

MICHAEL NOVAK

***George Gilder*: Visible Man: A True Story of Post-Racist America.** *Basic Books. 249 pp. $10.95.*

"THIS book is about a visible man, a man of action and news. What American today is so starkly floodlit, so thronged by reporters and sociologists, so chronicled and photographed, debated and diagnosed, as a young black male, single, fatherless, violent, now in the hands of the police. . . ." So begins George Gilder's new book, and continues: ". . . [T]he invisible one today, surely, is not the jobless youth of the streets, or even the welfare mother, but the successful middle-class black with the stable family and ascendant career. . . . As he succeeds, he is explained away; he is young Tom Token say journalists, educators, government officials, and even leaders of his own 'community,' and really, if the truth be known, white at heart."

This is also a book about a particular form of racism, the racism of our cultural elites, "the worst racism in America, black or white —the respectable kind—that will acknowledge blackness if it is holding a gun or applying for food stamps, a racism that claims as somehow 'white' the essential values of any modern economy or ordered society."

Future historians may judge the intellectuals of our generation by a light far harsher than we are likely to turn on ourselves, particularly in the matter of race. Many who today call others "racist" may yet live to have their own departures from honesty, their own invocations of a separate standard for blacks, described in that epithet. Each of us writes not only for our own generation and its prejudices, but for future generations as well, who will discern whether we sought truth or practiced systematic evasion.

George Gilder cuts through many fashionable evasions. He intends in a later book to attempt a study of welfare; here he limits himself to seeing as straight as he can the experience of one young black male in Albany, New York, an impressive young man with an excellent record in the military, a clearly recognized talent as an artist with a state agency, a restless lad, stormy, often violent, tried (and acquitted) on a charge of raping a white woman. Gilder wanted to understand this young man's life and the culture he is part of. He spent hundreds of hours interviewing him—practically, at times, living with him—and interviewing dozens of others who made up part of his world. The story is told in lean prose. It is unforgettable.

Mitchell (Sam) Brewer, the young black male, was accused of raping a white girl in Albany, where friends of the author, who knew Brewer from his work at the New York State Division of Historic Preservation, interested the author in the story. The main

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industry of Clinton Street, where Sam had lived for 15 years since his mother had brought him there with a now-replaced "stepfather," is not iron, or brickmaking, beer, law, or government contracts; it is welfare. More money in constant dollars pours into the homes surrounding the 100-year-old First Church from welfare than its original founders could have dreamt of earning by honest labor. Yet the area decays. Its decay is spiritual, too.

More than once, Sam has been in knife fights so brutal that he and his antagonist, or both, have slipped and slid in their freely-flowing blood and spent weeks under hospitalization. On one occasion, Sam's belly was ripped open by a knife in the hand of the man now living with his mother, another "stepfather." There is a daily pattern of physical intimidation in his life.

On his proud return from the Marines, Sam prospered for a while. His state job, he was told, would one day pay him more than $20,000 a year. Unaccountably, the steadiness of the work got to him; he had seemed happy, but he left. He worked at a lumber yard for a while, at $100 per week, bringing home less than $5,000 per year. He was absent sometimes. Finally, the hassle there too got to him.

Meanwhile, Sam did what several hundred other black men in Albany did; he moved in with a woman. The day she became 16, Bev and her teenage friends (without Sam) celebrated: Bev now qualified for Aid to Families with Dependent Children, and the child she had borne to Sam assured her of $1044 per year in food stamps; Medicaid, worth in her accident-prone world about $2000 per year; $179 per month in rent subsidy ($2148 a year); and another $2000 in welfare. Sam, after taxes, was bringing home several hundred dollars less than this on his job. He quit his job, and their new, larger apartment was taken out in her name—so she could qualify for AFDC. Although Bev was white, about half the other women in Albany that young black males like Sam moved in with—men too proud to collect welfare under their own names—were black. Sam loved his baby daughter. But he resisted the fact that the four-room apartment they could now afford to share was Bev's, not his. It got to him.

The rape case appears to have been a set-up; after the trial, one of the parties to it confessed as much to Gilder. But its notoriety fed the opening fervor of an Albany Rape Crisis Center and the militant feminism of prosecuting attorney Diane Dubiac. The case (the names in Gilder's book have been changed) was highly celebrated. Ms. Dubiac overplayed her moral superiority before judge and jury, and although the case looked very bad for Sam, he was acquitted. His way of life, however, did not change much.

Gilder and Sam eventually took a long trip to South Carolina, to Greenville, to try to make contact with Sam's natural father. By chance, Sam had learned that "Brewer" was his mother's name, and gained some clues about his father's identity. He met "brothers" and "sisters" by his father's other women—a whole family he hadn't

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known of before. His meeting with his father—and their contest of wills—is as excruciating a scene as exists in the literature of father and son.

In the end, Gilder's tale suggests the theme of fathers and sons—and of women deprived of stability, of children without fathers, of sons without certainty about the roles of son, father, breadwinner, husband. Oddly enough, the relation of father and son appears not to be related to poverty as we might expect. Gilder compares figures for Greenville and for Albany, Sam's two homes. In Greenville there are 19,145 blacks (1970) and in Albany, 14,132. Poverty was much worse in Greenville, but there were far more female-headed families with small children in Albany. Median black income in Albany was 20-percent higher, the proportion of black families in poverty 45-percent lower. But Greenville's black men were more often married, and far more often stayed with their women and children, than Albany's did. Greenville had 17 percent more black husband-wife families, in proportion to size. It had only half the number of female-headed households that Albany had.

Poverty, Gilder concludes, cannot be the cause of the abandonment of wife and children by men. Greenville had 50 percent *more* black poverty, and 50 percent *less* abandonment of women and children. The disparity between the two cities can also be dated. Before the mid-1960's, female-headed families were no more common in Albany than in Greenville. The disparity began precisely with the "war on poverty" in Albany.

Gilder examines statistics for rural counties in Carolina even poorer than Greenville. Though their poverty is greater, so is family stability. The correlation is not between the abandonment of family and poverty, but between abandonment and *welfare* poverty. In 1969, 40 percent of Albany's poor blacks were on welfare; only 18 percent of Greenville's. The 650 black welfare families in Greenville received only $676 per year. The families of Albany—like Bev and Sam—received closer to $6,000 per year; rational behavior leads many to the choice they made: quit work, live off welfare. Yet Sam could not survive that way.

"We must face the fact that today it is the North, Northern liberals—in a spirit of charity, fatally corrupted by a spurious sense of guilt—who are enslaving blacks," Gilder concludes. "It is not the migrants from the South who cause the problems of the North. In fact, census-department studies show that the migrants do much better in the North than the man blessed from birth with Northern generosity." The North has fashioned its own plantations: government offices. And its own system of total dependence: welfare. It may have demoralized and destroyed a higher proportion of brave, good, sound young persons in a few short years than a generation of slavery did. It definitely appears to have injured the black family more than slavery did.

Gilder has barely opened up this subject. His book was published a year ago, to ear-shattering silence. It goes against the fashionable

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self-deceptions of our time. His next book will explore the subject more generally and comprehensively.

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Two French Revolutions

CLIFFORD ORWIN

***Bernard-Henri Lévy*: Barbarism With a Human Face.** *Translated by George Holoch. Harper and Row. 204 pp. $12.95.*

***Sherry Turkle*: Psychoanalytic Politics: Freud's French Revolution.** *Basic Books. 278 pp. $12.50.*

We all ought to read Bernard-Henri Lévy, but I doubt that many of us will. Even in this good English translation, *Barbarism With a Human Face* speaks French. Lévy writes against the French Left; even more importantly, he is writing for it. And so, to do him justice, we must know something of these enemies of his, among whom alone he still hopes to find friends.

In this effort Sherry Turkle can help us. Her recent book interprets for Americans the peculiar concerns of the French Newer Left. Turkle is a sociologist, and her protagonist, "the French Freud," is not a person but a phenomenon. Since 1968 there has arisen in France, a society notorious for its indifference to Freud, an exotic and luxuriant "psychoanalytic culture." In the Latin Quarter this has meant the rise of an X-rated philosophy of man. French left-wing intellectuals still subsist off Hegel, Marx, Nietzsche, Heidegger, structuralism, and one another. These they now orchestrate, however, to the greater glory of the libidinal. And as never before they borrow from Freud.

Turkle's most interesting explanation for this has to do with the May Days of 1968. These attracted astonishing support which cut across all of the usual lines, and participation in them was attended by an extraordinary euphoria. Yet for no clear reason it all came to nothing. The rebels came away in the end with an intimation of obscure possibilities, and of equally dark obstacles to their realization.

Hence the new attractiveness of old Jacques Lacan (born in 1901), the man who has "re-invented Freud for the French." This Lacan has done by mating Freud with structuralism while divorcing him from Americanism. The act of primal (Oedipal) repression Lacan interprets as synonymous with the child's entry into the realm of language. The existence of speech signifies, therefore, our estrange-

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ment from happiness and from the basic human reality, the lost object of our desire. The structure of language, properly read, is a map of the structure of repression.

Lacan moreover has "radicalized" Freud for the French, psychoanalytically and politically, by denying the autonomy of the ego. The ego is derivative, constituted by encounters with others subsequent to the primal repression. (Here the Lacanian ego bears a strong resemblance to Rousseau's *amour-propre.*) To "strengthen its defences"—*à la* "American" psychoanalysis—is to reinforce misery and, given the social character of the ego, oppression. Nor is any ego authoritative for any other. No analyst must therefore presume to set up shop as the measure of "reality" for his patients. Nor is any analyst or group of analysts qualified to prescribe criteria for the training or practice of other analysts. You feel the call, and you hang out your shingle. *Caveat emptor.*

Not surprisingly, where Lacan goes, trouble follows. The more so in that, as Turkle documents, no one so averse to all dogmatism in theory has ever enforced it more jealously in practice. Turkle provides incisive accounts of the effects of Lacan and his "-ism" on the psychoanalytic societies, the psychiatric profession, the universities, and society at large. There is hardly a boat in France that the Lacanians have failed to rock.

Lacan's own politics, notes Turkle cryptically, "are not notably to the left." But neither that fact nor he himself has discouraged ultra-leftists from making him their own. Their litany is as follows: Language is the prime instrument of oppression, of the co-optation (by displacement) of our libido. Oppression has therefore ravaged us deeply, but conversely there is nothing amiss down there that cannot be uprooted with it. Madness is fine—it's pre-Oedipal—and schizophrenia, the clearest case of the capitalist ego. Let's have not psychiatry (which is mind control) but anti-psychiatry—the sick must learn to know their oppressors. (The plan is for something like the Mad Panthers.)

Psychoanalytic Politics is an admirable work of ethnography. On the whole it strikes the necessary balance between sympathy and detachment. In one respect, Turkle might have reflected more deeply on what makes her subjects tick: She describes American psychoanalysis as more "optimistic" than Freud himself. She opposes to it the assertion of "the French Freud" that there can be no cure for individuals short of a transformation of society. It seems to elude her that this position proves far more optimistic than the usual American one. What our psychoanalysts mean by health is an *adjustment* to the fact of repression. What theirs mean is the *end* of repression, that nefarious conspiracy of the bourgeoisie. If they emphasize with fearless realism how powerless I am to set my own house in order, that is by way of inflaming my rancor along with my hopes. Turkle finds Lacan hard going; that makes two of us. He has amounted in practice to the latest epicycle put forth to salvage Marxism.

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RADICAL parents, disillusioned children. Lévy begins where the ultraleft leaves off. He attacks it for a fatal inconsistency: its failure to confront the dark truth about power implict in its own understanding of things.

Left and ultraleft agree in arguing, on the one hand, that power is external to the oppressed; it is somehow "them" rather than "us." At the same time, they present power as "imaginary," because it depends on the opinion of its legitimacy. The oppressed need only shake themselves and the nightmare will vanish. All varieties of leftism come in the end to "the most banal of Enlightenment theories," even and especially those that think they have discredited such theories.

Lévy's own argument draws upon Freud and even Lacan. Power is indeed "imaginary," a "fantasy," an "objectification of ego." It is not something external, which we "internalize." On the contrary. "The cop isn't in our heads, he hasn't been there for a long time, because we have expelled him precisely in order to sublimate him and give him concrete form." Precisely because power is *not* external to us, we can't make it go away. The ruler changes, but there is always a ruler. "The Prince is another name for the world. The Master is a metaphor for reality. There is no ontology that is not a politics." In plain English, every way of looking at the world is "ideological" and serves to legitimate some ruling class. This commonplace of Marxist debunking Lévy uses to debunk Marxism.

In chapter after chapter Lévy argues that "the Master" is prior to those things from which leftists would derive him. He is implicit in language, presupposed by desire, enthroned in all notions of history or progress. All our efforts to banish him can issue only in a version of him all the more total for his "invisibility," for his proclamation that we have unseated him. In the guise of disappearing, as in Soviet Russia, "the Master" in fact infuses the whole of society.

For all of this Lévy is not about to sign up with the American Enterprise Institute. That would be to exchange the "optimism of the left" for the equally odious "pessimism of the right." "On the one hand power is claimed to be natural and therefore eternal; on the other, . . . cultural and therefore destructible. [The] latter is a lie, [and] the former [is] abject." But true?

Lévy does prefer liberal democracy to its only real alternative. "I do not grant the slightest theoretical value to what Marxists call formal freedoms, but practically, here and now, I do not see how we can deny their fabulous power to establish and preserve the division of society, and consequently to form a rampart against the barbarian temptation." Yet "barbarism" (Fascism or Communism) he understands as the culmination of the liberal project, which is also that of the Enlightenment. Lévy believes in what is called "convergence," but as he sees it, it's a one-way street. We are evolving into them, and we are doing it not by any departure from the tradition of liberal capitalism, but by way of unfolding its latent implications.

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"Barbarism is capital and nothing but capital; it is capital exaggerated, exacerbated, and unlimited. We must also say that it is a decadent and *degenerate* capital." And so we "are captives . . . of a closed circle where all roads lead to the same inevitable abyss."

Is this silly? Not entirely. Liberalism is the political arm of the Enlightenment, of the transformation of life by science. Its principle *is* this transformation, in the name of ends as nebulous as they are hopeful. There is nothing intrinsic to modern thought which might serve to limit its remaking of the world. There is prescientific common sense; but science (including social science) claims to have superseded it. There are premodern social institutions, but these cede to liberalism both in principle and in practice. And there are, of course, human rights, modern and therefore authoritative, but, for good theoretical reasons, they have proved nothing if not flexible. It is with some reason that Lévy concludes that "barbarism" is just modernity with its gloves off. "Because finally, isn't this classless society bounded by the hell of the concentration camps the practical realization of the oldest, most persistent project of the liberal Prince? Can't we see in it clearly what he has been fantasizing for two centuries but has not dared to push to its limits—the state of Universality and the society of Uniformity?" Here is an echo of Alexandre Kojève, perhaps the greatest French thinker of our time, an Hegelian who was compelled to recognize in Stalinism the perfection of the Hegelian state: universality as universal despotism.

Lévy restates in impassioned tones certain criticisms of liberalism with which we in the West have become familiar. His achievement is to have extended the leftist critique of politics to the politics of the Left. Having crawled out to the end of the leftist limb, he has surveyed it and seen that it is unsound. Fortunately for Lévy the journalist, and as unfortunately for Lévy the thinker, he knows no other vantage point.

Lévy would not enjoy his present celebrity if he had not denounced the Left in unmistakably leftist terms. His crucial point of agreement with it, implicit in his endorsement of its terms, is that political power is inherently a radical evil. This is melodrama, and we have a right to wonder why it has not occurred to Lévy to question it. Having exposed the exorcist as a liar, he continues to credit its account of the demon. He thus leaves himself with nowhere to go, and no principle of political action other than that of abstention from politics.

The "New *Philosophes*" know what they hate but are much less sure of what they want. In this they resemble the whole New Left of which they are the most fruitful branch. They have eyes enough to see that whatever they want, Marxism offers only what they hate. Good luck to them in persuading their fellows. They remind us to cherish liberalism not least for what it leaves undone—while recognizing that it always leans toward doing it.

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Beyond the Ethnic Polemic

ELLIOTT ABRAMS

Thomas Sowell, et al: **American Ethnic Groups.** *The Urban Institute. 415 pp. $15.00.*

IT is now nearly 20 years since Glazer and Moynihan began *Beyond the Melting Pot,* their classic study of ethnic groups in New York City. In it they wrote that "the ethnic groups . . . are also interest groups. This is perhaps the single most important fact about ethnic groups in New York City." And in a situation in which "it has been common to speak about the ethnic groups in terms of either blame or praise . . ." it must be expected that "most people will simply have to use arguments and facts and ideas as weapons, and will not be able to use them for enlightenment." This sad prediction has been proved correct by 20 years of academic and ethnic-group polemics, occasionally interrupted by a work such as *American Ethnic Groups,* edited by Thomas Sowell, professor of economics at UCLA and previously author of *Race and Economics.*

Nothing has been more conducive to polemics in ethnic studies than government policy, for since Glazer and Moynihan wrote in the early 1960's, ethnic affiliation has become a crucial determinant of government largesse. If ethnic-group impact on housing or welfare policy was predictable 20 years ago, it was still unpredictable that the government would adopt an ethnic policy, so accurately called by Nathan Glazer "affirmative discrimination." Once ethnicity itself became a matter of government attention, once the state began to confer benefits according to an individual's group membership and to relative group levels of deprivation, it was inevitable that scholarship would become politicized. Sociology was instantly transmogrified into politics, and an essay or a study became an act with potentially enormous political ramifications.

Thomas Sowell has not been unique in resisting the temptation to "use arguments and facts and ideas as weapons," but he has been an extraordinary exemplar of scholarly standards. *Race and Economics,* published in 1975, was dispassionate, detailed, and persuasive. *American Ethnic Groups* is another contribution to sobriety on issues of race and ethnicity.

The book consists of seven essays, two of them by Sowell. Three of the book's essays cover particular ethnic groups (blacks, Orientals, and Europeans) and four cover particular issues (income variations, academic discrimination, race and IQ, and sibling-IQ correlations). As is to be expected when seven essays take but 249 pages, there is some loss of depth. Some very controversial or at least comprehensive conclusions are reached without adequately stated evidence.

For example, while William Petersen's chapter on "Chinese and Japanese Americans" is a mine of information, the attribution of

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these groups' socioeconomic rise to the "self-discipline of individuals," supplemented by "various types of their own organizations designed to further their joint efforts," is insufficient. Perhaps such bold strokes are an inevitable consequence of the essay format, but one does wish for a more detailed account. Petersen's suggestion that the Chinese and Japanese groups reacted quite differently to hostility and discrimination—the Chinese by withdrawing into "Chinatowns" or emigrating home, the Japanese by persevering, at times on isolated small farms—is fascinating and fairly begs for a fuller explanation than can be given in a short essay.

Brevity presents a problem also for the chapter on "European Immigrant Groups," by Alice Kessler-Harris and Virginia Yans-McLaughlin. They argue that group cohesion is a key to success—unless there is so much of it as to isolate the group from the broader society. But when they employ this theory to explain the mixed socioeconomic status of Hasidic Jews, or to hold the Catholic Church and its parochial schools responsible for slowing socioeconomic gains, they have bitten off a good deal more than can be chewed in 24 pages—if indeed these particular conclusions are digestible at all.

SOWELL's own essays are the book's best. In "Three Black Histories," he manages in 42 pages to describe and explain the substantial, continuing difference among West Indian immigrants and their descendants, the descendants of slaves, and the descendants of "free persons of color." Many readers will be surprised at the continuing prominence of descendants of antebellum "free persons of color," who constituted only 10 to 14 percent of all blacks prior to 1860 but who, the data indicate, were very disproportionately present in the black middle class well into the 20th century. It is unfortunate that there are no data available which would tell us whether this pattern remains as strong today.

While this chapter contains no ground-breaking advances in historical knowledge, it is a timely reminder of the complexities of black experience in America. As Sowell notes, "Slavery and freedom are among the sharpest contrasts in human existence, and yet even this dichotomy in concept was a continuum in practice." Free and quasi-free Negroes were a minority in the antebellum period, but were not an insignificant group. By 1860, there were approximately 488,000 "free persons of color." Not surprisingly, while slaves were concentrated in the South, the free Negro population was rather evenly split between North and South, and not surprisingly it was vastly more urban than the slave population. Descendants of "free persons of color" were thus urbanized several generations before descendants of slaves, and, as Sowell notes, "Much of the later cultural contrast between the established Negro elite and underprepared black migrants to the cities had its origin in this difference between their respective ancestors." Sowell's calculation for Washington, D.C., in 1950 is that while descendants of antebellum "free

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persons of color" constituted one-seventh of the black population, half of the black professionals in that city came from such a background.

Sowell's analysis of West Indian achievement in America leads him to conclude that "the West Indian success pattern undermines the explanatory power of current white discrimination as a cause of current black poverty." Rather, Sowell believes the explanation lies in the nature of American slavery, with what he calls its "regimented dependence," in contrast to the greater "economic incentives and market experience" of West Indian blacks. Sowell writes that much of the difference between West Indian and U.S. slavery stemmed from the very different population patterns in the two places: In the United States, a minority of blacks was surrounded by a majority of whites, while in the West Indies the population was overwhelmingly black:

> The West Indian plantation could not draw upon a larger white society for its economic needs, and in fact members of the enslaved black population grew their own food individually, and sold the surplus in the market off the plantation . . . . [S]laves in the West Indies were assigned individual plots of land in which each family grew its own food. In short, even in the era of slavery, black West Indians had generations of experience in individual reward for individual effort, in at least part of their lives, as well as experience in marketing their surplus, and in managing their own food needs and monetary returns.

Sowell takes his economic analysis even further:

> The virtual absence of a white working class meant that "free persons of color," and later the whole free black population, could not be restricted to the most menial occupations, as in the United States, or the more skilled and more responsible positions would have gone unfilled. In short, black West Indians faced a wider occupational range than American Negroes. . . .

Sowell thus explains the socioeconomic pattern of West Indian blacks in the United States, and rejects the explanation often offered in the past—that their success is a biological phenomenon attributable to the fact that middle-class West Indian blacks are more "mulatto" than are American blacks.

As to the now-familiar debate over the impact of slavery on the black family, Sowell takes a firm stance. Recent research, he writes, tells us that slave families were stable, two-parent families headed by the father:

> [T]he bulk of American Negroes in the antebellum period came from a tradition of stable, two-parent families . . . the high incidence of broken homes and female-headed families among American Negroes in twentieth-century ghettoes was not a continuation of a tradition from the era of slavery, but was instead a development of a new pattern—a pattern also common among European immigrant groups during their difficult adjustment period in urban ghettoes.

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Sowell's rich chapter on "Three Black Histories" thus reveals that "the history of black people in the United States is the history of subgroups at very different stages of social evolution." If there is one lesson here, it is to avoid the oversimplifications and the simple-mindedness with which American black history has so often been viewed—and not least in recent years.

Sowell's essay on "Race and I.Q. Reconsidered" is a model of dispassionate analysis. Few ethnic or racial questions have been more bitterly and even violently debated, yet Sowell's approach is quiet, reasonable, and persuasive. Adducing the test scores over the past century of other immigrant groups as evidence, Sowell demonstrates that "there is nothing unique about the test scores of black Americans. . . ." As past disadvantaged groups rose in socioeconomic status, their average IQ scores rose. Mean IQ scores of Italian-Americans, for example, rose decade after decade in this century, until they came to equal or exceed the national scores.

A survey of I.Q. studies in 1926 found, for example, that the median was 85.6 for Slovaks, 83 for Greeks, 85 for Poles, 78 for Spanish, 84 for Portuguese, and 85.5 for Southern Europeans as a group. Army tests in World War I consistently found similar results, and the test scores of Poles and Russians led one contemporary psychologist to note that these results "disprove the popular belief that the Jew is highly intelligent." The history of European-immigrant test scores provides powerful evidence that environmental influences on test scoring are enormous: Over the decades, all such scores have risen. Black American scores have, interestingly, always varied by region, and always been higher by about 10 points in the North than in the South. Sowell concludes that black I.Q. patterns simply are not unique, and reflect normal trends, sex differences, and variations over time.

Nevertheless, Sowell ends this essay with a plea for more testing, which, in his view, will provide important clues "as to the sources of many educational and social problems." When Sowell explains that three-quarters of all black males who fail Army mental standards come from families of four or more children, or that 52 percent of National Merit Scholarship finalists from five-child families were first-born and 6 percent were fifth-born, he demonstrates that test scores can be a useful tool of analysis, and their politicization has meant a significant loss of useful data.

TAKEN as a whole, these essays on ethnic groups seem to suggest a limited role for ethnicity as an explanation of current socioeconomic status. Discrimination is seen to be lessening, and Eric Kanushik's chapter on "Ethnic Income Variations: Magnitudes and Explanations" concludes that "local conditions appear to have a powerful impact on earnings—perhaps more important than race, and at least equal to several years of schooling." This is not to suggest that ethnic differences are insignificant, or that they do not profoundly affect the individual's life: where he lives, whom he

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marries, how he raises his children, whom he supports for election. But, happily, it does suggest that our ethnic pattern is not a caste system which determines an individual's overall socioeconomic status: how high his income, how good his education, how large his house.

All of this, of course, demonstrates that government policy is especially perverse. We may be enshrining in regulation, statute, and indeed even (through Supreme Court decisions) in the Constitution, ethnic policies which will soon outlive whatever usefulness they ever had. As the ability of ethnic affiliation to explain socioeconomic status declines, government increasingly relies on group affiliation to convey benefits to some and impose comparative disadvantages on others. The result can only be seen, more and more, as injustice.

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The Fairest of Them All

ROGER STARR

***Hugh Stretton*: Urban Planning in Rich and Poor Countries.** *Oxford University Press. 228 pp. $11.95 cloth; $5.95 paper.*

THIS little book contains valuable nuggets of information, mainly about urban developments in such hard-to-reach places (for Americans) as Cuba and Hungary. Unfortunately the facts are suspended, like bits of brightly colored chopped peppers, in the murky aspic of the author's ethical sensibility. The hungry reader may try to boil away the gelatine to get at the solid food, but the author will not permit this, for he aims to improve, not merely to inform, and insists that the American reader get a full dose of the coating he has concocted from old Fabian bones. Professor Stretton has developed a switch on the ancient night club wheeze in which the master of ceremonies says: "I've been rich and I've been poor, and rich is better." Professor Stretton's version ends with "... and poor is better." He seems to mean it.

Stretton starts out with the reasonable ambition of explaining to simple souls what city planning is all about. His method is to take four likely basic propositions about urban life and prove that each of them in turn is *not* what city life is about. First, he discusses the theory that the city is a community—a theory which he ascribes to Patrick Geddes, Ebenezer Howard, Lewis Mumford, and Jane Jacobs. Although these planners did not agree among themselves as to the conditions in which cities do become communities, all, according to Stretton, felt that class differences and fundamental maldistribu-

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tion of goods and services could be remedied by making changes in the spatial arrangements of homes, parks, transportation routes, and industrial areas. Stretton rejects this description on the grounds—not quite explicit—that stressing the community of interest fails to put a big enough burr under the tail of the egalitarian ass that will carry us all into Jerusalem.

His second hypothesis, that cities are marketplaces, Stretton rejects with much more vigor. His faith in the efficacy of marketplaces is limited, and he resents the claim that government sometimes unwisely interferes with the market. Rather, we ought to assume at least that everything should be distributed in accordance with a righteous plan. Having visualized this demi-paradise, we should ask ourselves how much of it could possibly be duplicated by a market system in which people arrange things for themselves by buying and selling, measuring one value against another. So little would he dispose of by commercial means, that no one dare call the city a marketplace. Unfortunately, though, he does not tell us how, outside his imagination, the demi-paradise of just distribution is to be achieved.

Perhaps cities might be understood as battlefields, Stretton suggests—a metaphor he ultimately rejects as not adequately constructive. He uses this thesis, however, to enter into a discussion of Marxism, to which he seems naturally attracted, but which he ultimately resists for reasons of less substance than those of other non-Marxists. While non-Marxists generally find that the overthrow of private ownership in no way ends the struggle of classes for commanding positions in society, and many of us conclude that the Marxist combination of political power with economic control results in horrors of exploitation far worse than those even of early capitalism, Stretton rejects traditional Marxism on much gentler doctrinal grounds. Marx, he complains, regarded the home as a piece of durable consumer goods. He *should* have understood it to be a piece of producer goods because people produce such wonderful things in their homes—though Stretton doesn't say what those things are. (The American reader, watching the proliferation of one- and two-person households and the services they demand, is left to construct his own list: The home produces half-eaten TV dinners, hand-rolled cigarettes, empty bottles, terraria, and quarters for the laundromat.)

Finally, and with the greatest indignation, Stretton rejects the notion that the city is a machine. This definition opens the door to a denunciation of the computer as a planning tool, and of those planners who believe that urban reality can be reduced to a set of complicated predictive equations. With particular venom, our author attacks cost-benefit analysis as a basis for deciding what is to be done. His reasons are familiar, but argued with great intensity. Some values are obviously incapable of being arranged in numerical order: Beauty is hard to quantify. But it is not the elusiveness of aesthetics that moves Stretton to reject the numerical modes of cost-

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benefit analysis. It is rather that values derived from poor people's activities tend naturally to be expressed in smaller numbers than those of not-so-poor people, and that therefore cost-benefit calculations tend to be reactionary in nature. Decisions that benefit pedestrians are undervalued, because their transport time is so cheap; decisions that cut down the time taken by Rolls-Royces between Ghent and Aix tend to be overvalued, because the costs are exorbitant to start with.

SINCE no single definition of "the city" can satisfy Stretton's requirements, he comes down solidly on the side of planning as a pluralistic discipline that requires careful observation of the specific city in which the planner works, and formulates a program by its nature thoroughly imbued with moral value. Here his reasons for detesting cost-benefit analysis become clearer: The moral basis for choosing one plan over another is not maximum efficiency, or higher productivity, or the attainment of civil peace, or the creation of aesthetic value, or the liberation of the human spirit, but—as foreseen by the Fabians—the promotion of "fairness." In short, that city plan is best which gives the poor and lowly a more substantial share of the goods and services that previously belonged to the rich and highly.

In Professor Stretton's world, emphasis on the production of more goods would be mistaken, because the problem of production has withered away. In this world, new technologies do not develop. Sources of raw materials never give out, so that capital need not be raised to replace them. Industrial plants do not become obsolete in the face of competition from abroad. Since nothing need be imported, nothing need be sold abroad in order to raise money for the imports. All suggestions to the contrary are reactionary and the city planner should not concern himself with them. In effect, they are being urged upon him by those who need no help, in order to divert him from being fair to those who do need help. (And whether or not they actually do need help, it's much fairer to allow everyone to starve equally than to permit everyone to be well fed when that means some will have more than others.) Thus, it is better for poor countries to avoid trying to become rich by industrialization, because this means that the poorest people in those countries will be deprived of capital investment that might go to making a small improvement in their lives—or so Stretton claims. In poor countries, what's more, a higher level of "unfairness" is permitted than in rich countries:

> The poorer the country, the more necessary it usually is to be building several levels of housing at once. That usually means that middle-income people get more immediate benefit than poorer people do. It can't be helped, and the poor will likely be poorer still without the programme. . . . In affluent countries, neighborhood planning and development is often the last and least regarded step in the process of urban development. In developing countries it needs to be among the

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first and is likely for a long time to be among the most important for economic as well as social reasons.

In a poor *Communist* country, planning the cities may take a wildly erratic course. The most interesting discussion in the book reveals how the international goals of Cuba's Communist politicians affected the attitude of Castro's government toward the significance and use of Havana. (Hungarian urban policy is equally fascinating, but Hungary is classed as a "rich" Communist country.) Stretton identifies five consecutive policy shifts on the subject of Havana. For example, when Castro wanted to revolutionize South America, he stressed small agricultural holdings, and Havana was to be partially emptied and downgraded; when he wanted to maximize his sugar crop to meet economic foreign-exchange goals, the port of Havana and the island transportation system grew in importance; when getting along with the Russians became more critical, another set of policies imitating the Kremlin's urban agenda became the order of the day. Obviously, none of this was motivated as Stretton says urban planning should be, by a concern for "fairness." But regarding Cuba, Stretton allows room for other considerations:

> Through the 1970's some Cuban planners preferred to see the whole city as the "neighborhood" for everybody in it. . . . I believe that most of the technical and social consequences of that approach are mistaken, especially in relation to socialist aspirations; also that some hindrances to further economic development are built in that kind of urban fabric. . . . It also seems a pity that a revolutionary society so full of life and Caribbean colour should be constrained by its masters to build such a characterless international *style* of urban habitation. Nevertheless, the Cuban achievement should not be underrated. Despite its economic difficulties and oscillating policies, Cuban society is run on fairer principles with better housing and services and general social conditions for most of the people, and less abuse and exploitation for many of its city people, than were ever likely under its capitalist masters.

As befits one enamored of Cuban fairness, Stretton has a low opinion of the electoral techniques of government; his remarks on the United States (a rich capitalist country) make his contempt quite clear. America's urban problems, he says, persist because a "pluralist democratic system" works to accomplish what its effective middle-class majorities want.

These wants he identifies as three in number. First, the suburban majority wants cheap urban services from state and Federal government. Second, the same majority wants to avoid contributing reciprocally to the costs of central-city government, and succeeds in this so effectively that there are no "suburban tax contributions to the service and welfare costs of the central business districts of the city ghetto." Third, the suburban majority wants to monopolize all mortgage credit so that its members can build big houses for themselves.

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These three bits of doctrine are like pieces of a jigsaw puzzle cut into familiar shapes, but wholly out of scale with the rest of the picture in which they are supposed to fit. Suburban majorities may *wish* for cheap services, but in fact they pay plenty—through state, Federal, and local taxes—for the services they get. In the suburban counties around New York City, for example, real-estate taxes are much higher than taxes on similar residential property within the city limits. The suburban majority may not wish to contribute to the inner city either, but contributions of the *state* government, largely supported by income taxes levied on the same suburban majority, cover approximately one quarter of the New York City budget. Furthermore, the suburban majority is not accurately described as rich. The lower levels of city workers, from street cleaners to policemen and firemen, constitute a significant part of the suburban majority. Through Federal income taxes, the suburban majority makes equally significant financial contributions to the inner cities. And as for the flow of mortgage money, Professor Stretton's statement is simply ludicrous. The level of housing investment in the United States has produced housing wealth sufficient to permit a person-per-room occupancy rate much lower than in any other country in the world except perhaps Abu Dhabi.

It is certainly true that immense problems exist in the older cities of the United States with respect to their large underemployed populations. But the most serious of questions facing America with respect to helping them is whether "fairness" is the key to a workable policy. The major problem of the underemployed is that the manufacturing activities of the central cities declined just when blacks and Hispanics were arriving to seek industrial employment. The cruelest social policies may be those that appear the fairest and yet tend to anchor the underemployed in cities without significant economic opportunity.

One concludes, inevitably, from Professor Stretton's work that if America, the capitalist country, were to encourage or force the migration of its unemployed urban population to new parts of the country "beyond the American Urals," Professor Stretton would be quick to denounce its cruelty. But if a Communist nation were to do the same thing, it would be, though regrettable, on balance "far better than what they would have received under their former capitalist masters." One wonders how a writer incapable of fair comment can make fairness the test of urban policy. To what extent is the decay of Britain's older industrial cities—Liverpool, Manchester, Glasgow, London itself—the outcome of the same determination to seek "fairness" without acknowledging reality? Why this confusion of the goals of public policy should overtake so many scholars in the older Western nations at this time remains a matter for political and psychological speculation. Professor Stretton's case would be a good place to begin.

Roger Starr is on the Editorial Board of The New York Times.

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Inside the "Administrative Crisis"

JEREMY RABKIN

***James Freedman*: Crisis and Legitimacy: The Administrative Process and American Government.** *Cambridge University Press. 280 pp. $15.95.*

THIS book invites us to ponder "the failure of the Federal administrative agencies to still the recurrent sense of crisis with respect to their legitimacy." In Freedman's view, recent concerns about these regulatory authorities have actually fed on a complex of doubts and suspicions that have troubled the American public since the early years of this century. The real concern in this book, however, is not to analyze public doubt about administrative action, but to counter it.

A professor of administrative law at the University of Pennsylvania, Freedman is apparently the first legal scholar to offer an extended defense of the "administrative process" in more than a decade. It has been a decade in which traditions of judicial deference to administrative judgment often yielded to open expressions of contempt, a decade in which the New Deal faith in administrative expertise seemed suddenly to be going the way of the temperance crusade or the "One World" movement. Certainly Freedman's plea for the "essential legitimacy of the administrative process" is not ill-timed. But it is hard to imagine that his familiar arguments will really reassure many troubled minds. The book is perhaps chiefly of interest as an unwitting symptom of the "crisis" it purports to address.

The "most prominent" sources of public uneasiness with the administrative agencies, according to Freedman, all relate to the agencies' perceived novelty or incongruity in our traditional constitutional scheme. He thus devotes an entire chapter to refuting the charge that administrative agencies violate the constitutional norm of separated powers with their characteristic combination of rule making, prosecutorial, and adjudicatory functions. In subsequent chapters, he defends the procedural fairness of administrative adjudications, notwithstanding their departures from the procedures of trial courts, and defends the democratic basis of administrative rule making, though such rule making relies on the judgment of appointed officials rather than elected legislators. By failing to appreciate the flexible doctrines of the Founders and the rigid safeguards of the Administrative Procedures Act, Freedman concludes, the critics have "unfairly" stigmatized the "legitimacy of the administrative process" on all these counts.

Most of what Freedman has to say on these points was actually standard fare in the administrative-law texts of 20 years ago—and the rhetorical staple of early champions of administrative action

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decades before that. Though venerability is doubtless an asset for arguments about the intangibles of due process, some of the old themes sound rather hollow by now. Freedman's insistence, for example, that the administrative agencies are adequately accountable to elected officials rests almost entirely on abstract possibilities, isolated occurrences of which hardly establish them as reliable controls. Thus, Congressional pre-emption of an FTC rule against cigarette advertising in 1964 is cited again and again in this book as evidence of Congressional ability to override administrative regulations with subsequent legislation. An attentive reader might wonder why there are not more illustrations available; Freedman does not. Similarly, if one judged solely from Freedman's reassuring (but sketchy) account of Presidential control mechanisms, it would be hard to understand the righteous fury with which environmentalists and other "public-interest" activists have greeted efforts of the Carter Administration to prod their pet agencies to greater cost-consciousness—and still harder to understand why the Administration's exhortations have been so largely ineffectual.

But if Freedman's arguments often seem politically naive, that is doubtless attributable to his limited range of interest rather than to any lack of candor. Due process is his real theme. He devotes several entire chapters to illustrating the structural and procedural requirements of the Administrative Procedures Act, offering a labored account of their operation in a little-known regulatory program within the Department of Commerce. He devotes still more space to examining the safeguards on summary action (administrative action in advance of formal proceedings) and offers some sensible suggestions for enhancing them. But one must surely be a rather pedantic scholar to find much connection between these highly technical issues and a "crisis of legitimacy" felt by the ordinary citizen.

Yet in those instances in which Freedman does acknowledge issues of greater interest to the general public, he is not very inclined to pursue them. He suggests, rather vaguely, that public concern about the "dehumanizing" mechanics of bureaucracy might be eased by encouraging more decentralization and more public participation in administrative activity—but he does not trouble to explore where such devices might be appropriate or what should reasonably be expected of them. He suggests that Congress might soften public suspicion of administrative expertise if it narrowed or sharpened the broad mandates often handed the agencies and made more of the key decisions itself. He does not trouble to consider, though, how a Congress which sought to make detailed policy decisions for every regulatory program could avoid becoming the captive of its own bureaucracy of advisors. In the end, he falls back on reminders that the tyranny of experts and the torpor of bureaucracy are not unique to Federal agencies. And he urges us to recognize that the "administrative process" itself cannot be blamed for the conflicting or unrealistic demands we have often placed on particular programs.

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If this does not quite satisfy as a response to the administrative "crisis," perhaps the largest reason is that it defines the challenges to administrative "legitimacy" in such a one-sided manner. In fact, the most striking feature of this book is its complete refusal to look up from that abstraction called the "administrative process" to the larger challenges of *the administrative state.* Freedman has nothing to say about the cumulative costs of Federal regulation, for example, and nothing to say about the burdens it imposes on technological or economic initiative or the threats it poses to local autonomy or institutional diversity. But surely it cannot be said that these problems raise no interesting questions for legal scholarship. A ready example: Do equity considerations oblige an agency to make special allowances for firms or institutions that would suffer disproportionate harm from the standards generally imposed—or should a strict regard for the rule of law preclude such special treatment? Such questions find no place in Freedman's defense of administrative "legitimacy," however, nor in his assorted nostrums for enhacing it—for the social consequences of regulation rarely intrude on his "due process" concerns.

Thus Freedman is at great pains to establish that the separation of functions within the administrative agencies reproduces the safeguards of the constitutional separation of powers. He does not seem to recognize that the Founders favored the constitutional system of checks and balances at least as much for ensuring that legislative action would be difficult—and therefore infrequent—as for ensuring that it would be "fair." Similarly, federalism was applauded for imposing barriers against centralized regulation—and it is revealing that the federal system receives no discussion at all in this book, even though Federal pre-emption of state and local regulation has probably undermined the authority and vitality of state and local government in recent decades even more than has Federal preemption of local revenue sources. But we have created specialized Federal agencies precisely to facilitate the imposition of national standards. It has always been accounted to their merit as regulatory mechanisms that the agencies can promulgate rules more swiftly and in more detail than can Congress (with its dependence on bicameral legislative consensus) and enforce new standards more actively and more broadly than would be possible through direct prosecution in the courts (with their cumbersome formal procedures and non-expert judges). Naturally, then, as the number of specialized agencies has increased, Federal authority has extended its effective control into more and more areas of American life. Given our national traditions, it would be remarkable if this did not leave people with a certain uneasiness about the administrative agencies.

Of course, it is quite true—as Professor Freedman reminds us—that we have had Federal administrative bodies adjudicating private rights and promulgating binding rules from the administration of George Washington onwards. But the proliferation of such authorities and the continual extension of their activity, beyond a certain

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point, represents a whole new constitutional reality, even if each new agency seems to follow the same procedures as its predecessors. There are doubtless some people who would favor a system in which Federal agencies could control all the major investment decisions in the economy and determine the character and distribution of all basic offerings in housing, employment, and education across the country. But whatever might be said for the "legitimacy" of this *de facto* bureaucratic socialism, it is impossible to portray it as consistent with the constitutional order conceived by the Founders. The Founders were perfectly able to imagine—as Professor Freedman's legal mind apparently is not—that governmental restraints on private initiative can be oppressive, even where they operate through strict due process and remain accountable in some form to democratic majorities.

Doubtless we are today more sensitive than the Founders were to the dangers of an unregulated economy and the inequities of an unregulated society. Doubtless our traditional preference for unfettered private or local initiative was never absolute nor dogmatic, and provided no clear formulas for delineating the proper scope of Federal regulation. And doubtless it is easier for people to decry the cumulative burden of Federal regulation than to agree on which regulatory programs, in particular, are dispensable—even as public resentment of the Treasury's total claim on national income has yielded no consensus on the particular budget items that should be cut back. Freedman may be right when he assures us—despite all his talk of "crisis"—that we are in store for still more Federal regulation in the future. But it will take a more seductive rhetoric than he offers to make the American public comfortable with that fact.

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Women Versus Women's Reform

PETER SKERRY

***Sheila Rothman*: Woman's Proper Place.** *Basic Books. 322 pp. $12.50.*

SHEILA ROTHMAN'S *Woman's Proper Place* is a study of the changing policies—private and public—toward women in America over the past hundred years. Her particular interest is in the efforts of women reformers who have taken up the task of speaking on behalf of all women. Dr. Rothman begins with a somewhat skeptical look at the philanthropic activities of genteel women during the decades following the Civil War to uphold the ideal of "virtuous womanhood" they felt to be threatened. The work of these "Protestant

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nuns," as Rothman calls them, ranged from temperance and suffrage reform, to friendly visiting in the homes of the poor, to the establishment of YWCA's to protect the virtue of unmarried working girls newly arrived in the cities. Dr. Rothman then goes on to examine the activities of Progressives, who argued for governmental action to protect women in the home and in the factory. These chapters serve as a prelude to a lengthy discussion of today's women's movement, its reform proposals, and its future. Not quite history and not quite policy analysis, this intriguing work is clearly the product of much diligent research and offers some gems of historical scholarship that illuminate current controversies over policies toward women.

Particularly fascinating is Dr. Rothman's account of the schism that developed among women reformers during the 1920's. By this time, Progressives like Jane Addams and Florence Kelley had scored numerous legislative successes. Many states had enacted laws prohibiting women from working more than a prescribed number of hours per day and from working at night, as well as from lifting heavy weights on the job, working immediately before or after childbirth, and working in dangerous industries such as mining or in any place that would be detrimental to their "potential capacity for motherhood." The assumptions behind such protective legislation were clear: Women belonged in the home with children; work outside the home was at best a necessary evil to be sharply delimited. The not-surprising corollary to this was that children belonged at home with their mothers. Widows' pensions were advocated as an alternative to sending fatherless children, whose mothers could not support them, to foster homes and orphanages. Child-labor laws would keep children out of factories, while compulsory-attendance laws would keep them in schools. And for these same reasons many Progressives supported labor unions, which they argued would increase fathers' wages and thereby allow mothers to stay at home with their children.

It was shortly after reformers achieved one of their major victories —female suffrage—that protective legislation for women came under attack from the National Woman's Party, a small group of women that sought an equal-rights amendment in order to eliminate laws that in their view denied women freedom of choice. The response of Progressive women to this charge was straightforward and, for us today, instructive. Florence Kelley declared, "The political rights of citizens are not properly dependent upon sex, but social and domestic relations and industrial activities are." While Progressives had fought for the political equality of women, they would not support the notion of their social, economic, or legal equality. They also argued that because women workers were young and participated irregularly in the labor market, they were especially difficult to unionize and therefore in particular need of protective legislation.

Arguing that this type of legislation segregated women into low-status jobs that men did not want, Dr. Rothman clearly sides with the proponents of the equal rights amendment in this debate. But

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she never really addresses the revealing criticism of Harvard Law Professor Felix Frankfurter, whom she quotes:

> The Woman's Party is concentrating upon reforms and upon sentiments of special concern to a comparative handful of professional and leisure-class women, who seem either indifferent to or ignorant of the consequences they will bring upon millions of wage-earning women. The proposed amendment threatens the well-being, even the life of these millions.

No doubt protective legislation did contribute to the concentration of women in low-paying occupations. But does this constitute *prima facie* evidence of employment discrimination, as the author suggests? Dr. Rothman fails to consider the possibility that working women saw themselves (as the Progressives also saw them) primarily as wives and mothers and therefore did not aspire to advancement in the workplace. Nor does she consider the possibility that women whose first loyalties were with their families frequently became transients in the labor market, entering and leaving as their other responsibilities dictated, and that therefore they were generally of less value to employers than more stable employees. And what of these working women themselves? Did they, or their spokesmen in the unions, support the equal-rights amendment? Did they feel that protective legislation discriminated against them? Dr. Rothman's silence on such questions concerning the attitudes of ordinary women —those not involved with reform efforts—is a persistent problem in her book.

ANOTHER admirable bit of research is Dr. Rothman's treatment of an all-but-forgotten public-health experiment. The Sheppard-Towner Act, passed by Congress in 1921, was the nation's first Federal health-care program. It was intended to reduce high rates of infant and maternal mortality by setting up clinics through a system of Federal matching grants to the states. Staffed primarily by public-health nurses, the clinics pioneered the notion of preventive care for expectant mothers and young children. Their primary activity was the dissemination of nutrition and hygiene information to mothers and midwives. By decade's end, about 3,000 clinics were in operation. By that time private physicians, who had not previously practiced preventive medicine, had begun to adopt many of the clinics' innovations, including such routine procedures as periodic medical examinations. And although the clinics were purposely designed not to encroach upon the prerogatives of the medical profession, the Sheppard-Towner program had by then aroused physicians around the country who insisted, for example, that pregnancy was "a strictly medical problem" that should not be handled by public-health nurses. The American Medical Association branded the program "a Bolshevik plot" and in 1929 made sure it was not funded again.

Once again Dr. Rothman unearths an interesting piece of history. And once again her treatment is not without its problems. For Dr.

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Rothman the history of the Sheppard-Towner Act is the prototype of what she refers to as "the ongoing confrontation between women and physicians." She concludes that the "defeat of Sheppard-Towner marked the end of female expertise in the field of health care. . . ." It is unclear what she means by "female expertise." It is even less clear that the history of Sheppard-Towner represents a conflict between physicians and "women." To be sure, the actions of the AMA were hardly laudable. But was this a conflict between doctors and *women as a class,* or was it between a conservative, newly-established profession and impoverished immigrants who could not afford medical care for their children and wives? After all, the real losers in the demise of Sheppard-Towner were not the women reformers who supported the program, nor even the public-health nurses who lost their jobs, but the immigrant women and children who were effectively denied basic medical care. Ignoring the realities of social class, Dr. Rothman prefers to deal in broad generalities about "women" as an undifferentiated mass.

Like many critics of the medical profession, the author fails to distinguish among the kinds of power that doctors wield. Describing the physician's expanding role as sexual counselor to women during the 1920's, she deplores this "medicalization of sex" and goes on to quote a relieved housewife who finds it easier to talk about marital problems with her doctor than with her priest. From this fragment of evidence Dr. Rothman concludes that "the gynecologist had now established his hegemony over sexuality." But isn't there a distinction to be made between the organized political power of the AMA lobby (in Dr. Rothman's terms, the "medical monopoly") and the influence doctors have with grateful patients?

Dr. Rothman's critique of the medical profession extends to her discussion of the continuing controversy over abortion. In an otherwise unobjectionable treatment of the issue, she argues that doctors as a group are opponents of abortion reform and the chief obstacle to full implementation of the Supreme Court's 1973 decision. Noting that only about one-fourth of the nation's hospitals provide abortion services, she concludes that "doctors' social views are shaping institutional practices." But where is the evidence that it is doctors who are shaping institutional practices rather than lay opponents of abortion? If anything, doctors have been among the staunchest supporters of abortion reform. As James Mohr, author of the only comprehensive history of abortion in the United States, points out, physicians played an important role in liberalizing abortion laws in the late 1960's. He cites a 1967 poll indicating that 87 percent of the nation's physicians favored liberalization. And, of course, many risked their licenses to test the constitutionality of restrictive statutes. It is true that physicians were the prime movers behind the original anti-abortion statutes enacted during the last half of the 19th century, and that many doctors have recently begun to express misgivings about abortion on demand, but doctors as a group cannot be classified as opponents of reform.

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Indeed, the authority of the medical profession is, ironically, a key support of the Supreme Court's legalization of abortion. Its 1973 *Roe v. Wade* and *Doe v. Bolton* decisions are based upon the explicit assumption that abortion is a medical procedure, the need for which is a matter of professional judgment. While the Court found abortion to be protected by a woman's right to privacy, it also found that the decision to abort is "inherently, and primarily, a medical decision, and the basic responsibility for it must rest with the physician." Thus while many regard abortion as a moral issue of grave public import, the Court has deemed it a matter of medical expertise protected by the right of privacy. Here then is an instance where the authority of the medical profession has greatly benefitted an objective of women reformers—an example, if you will, of that "medicalization" of sex and reproduction of which Dr. Rothman is critical.

HER critical stance toward professionals leads her astray in another area—her treatment of child care. Here Dr. Rothman disapproves of the effort of public-school teachers who have sought to preempt the child-care field for themselves. As she recounts the recent history of Federal child-care legislation, then-Senator Mondale was unable to get his Child and Family Services Act through Congress primarily because the coalition that had supported similar legislation four years earlier had broken up over a jurisdictional dispute: Albert Shanker and the American Federation of Teachers argued that the schools with their trained teaching staffs should be the prime sponsors of any new child-care centers, while Marion Wright Edelman and the Children's Defense Fund argued for a program of diverse, community-based sponsors.

Undoubtedly this split within the ranks of child-care proponents has been a serious impediment to the passage of legislation. But an equally important factor is certainly the indifference, if not outright hostility, of many Americans toward any Federal initiative in this area. When Senator Mondale introduced his Child and Family Services Act of 1975, he received up to 5,000 letters a day in protest. And there is a growing body of evidence that most Americans are content with—indeed prefer—the informal child-care arrangements they make with relatives, friends, and neighbors.

Anxious to develop a parallel between Sheppard-Towner and child-care programs, Dr. Rothman observes: "Day care would not be the first instance of a group of professionals taking over a program that others designed." I happen to share the author's jaundiced view of teachers' inflated claims to expertise in this area. But Dr. Rothman's focus on the conflict between professionals and women does not do justice to the complexity of this issue. After all, the professionals in question are themselves predominantly women. As low-status professionals attempting to hold onto their jobs in a period of retrenchment, these teachers have little in common with the physicians with whom they are compared. Finally, it should also be noted that the child-care centers advocated by Edelman (and

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apparently by Dr. Rothman) would also be staffed by trained, professional child-care workers.

The fundamental problem with this book is that the author's focus on the apparent conflict between women and professionals permits her to ignore some obvious and important sources of opposition to today's women's movement. This is especially unfortunate in light of Dr. Rothman's remarks early in her book:

> Each generation seems to believe that social policies devised and implemented by middle-class women will be in the best interests of lower-class women . . . However strong the sense of solidarity that brings women into social policy, it has not been able to bridge the gap between social classes . . . For the women's movement today to ignore this legacy would be foolhardy and self-defeating.

From this one might well expect an examination of the divergent interests of women of different backgrounds with regard to today's reform agenda. But this is nowhere to be found. Dr. Rothman assumes that all women want the same things—child-care programs, abortion on demand, an equal rights amendment—and that the "gap between social classes" merely reflects the different abilities of women to satisfy similar needs. Dr. Rothman never considers that these needs themselves may vary across class lines, that—as Lillian Rubin and Laura Lein have pointed out in their studies of working- and lower-middle-class families—women from such backgrounds, though they enter the labor force, hold onto traditional family values and continue to view themselves primarily as wives and mothers.

Sheila Rothman would have us believe that the principal opponents of today's women's movement are self-interested professionals. One would never know from reading *Woman's Proper Place* that many women—perhaps a majority of women—emphatically reject the goals of this movement. Thus, like the reformers she skillfully portrays, Sheila Rothman sidesteps the reality of social class and assumes that what is best for some women is best for all.

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Government and the University: Is Everybody Happy?

SETH CROPSEY

***Chester E. Finn, Jr.*: Scholars, Dollars, and Bureaucrats.** *The Brookings Institution. 225 pp. $11.95 cloth; $4.95 paper.*

ACCORDING to Webster's, policy is the course of action a governing principle dictates. No governing principle exists in the Federal

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government's relationship with higher education, hence there is no real Federal *policy* toward higher education. Instead, one finds a remarkably complicated maze of programs and regulations designed and administered to achieve the particular aims of numerous Federal agencies from H.E.W. to the Bureau of Mines. Chester Finn Jr.'s *Scholars, Dollars, and Bureaucrats* is an indispensable guide for whomever would understand that maze.

The Federal government spends roughly $14 billion a year on higher education. That money reaches its recipients by three channels. Programs which help students pay for their own educations, such as those administered under the 1966 G.I. bill or the 1965 amendment to the Social Security Act, account for $7.3 billion; $4.4 billion is spent on grants and support for research the government wishes to encourage; and the balance, $2.1 billion, represents what the Treasury fails to receive because of tax exemptions extended to parents who support students, student benefits, and charitable contributions to universities. Finn examines each of these channels with a view toward understanding what effect the Federal government currently has, and ought to have in the future, on higher education.

His discussion persistently reminds us that this country's post-secondary educational system is essentially a useful industry—one which supplies young people with the degrees they need to advance, and the government with research. Washington's contribution to the former is student aid. This indirect form of assistance to education is determined on the basis of need, and establishing that need is, as one might imagine, tricky.

Because family incomes and college costs vary widely, a given family's "need" depends to some extent on the cost of the school their child wants to attend. This raises what Finn calls the "steak/macaroni problem." Food-stamp recipients get the same level of benefits whether their personal preferences are for steaks or macaroni. But poverty-level students get more money to help pay tuition to a high-priced university than had they gone to some less expensive university that nonetheless provided good instruction. Under the present system, the student gets his choice of college and, as Finn carefully observes, the college gets its student.

This, he says, "should not be ignored, for, though student aid is most often discussed in the high-minded language of equal educational opportunity, from the viewpoint of institutions whose well-being depends on having enough students it plays a more utilitarian role, not very different from the discounts, rebates, and bargain days encountered in the commercial world." Everything suggests that students share their university administrators' utilitarian concerns. A 1975 survey asked freshmen to list the factors important to them in choosing a particular college. The expectation that it would help them land a better job was the first-place response.

Most Federal student aid comes to recipients through eight major programs. They are administered by agencies and under laws which sometimes mesh, sometimes conflict, and often intend something

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other than assistance to higher education. An example of the latter is the Social Security Administration's payments to minor dependents or survivors of social-security beneficiaries—payments which totaled $1.2 billion in 1976-77.

This same mixing of purposes distinguishes Washington's most direct form of assistance to higher education. Federal dollars in direct grants to colleges and universities came to $4.4 billion in 1977. These funds were spent not so much to help academia as to furnish the donor with desired services. Finn includes an interesting table of Federal-agency contributions to colleges since 1963. Among other things it shows that the Defense Department's academic underwriting dropped 12.5 percent, from $218 million in 1963 to $191 million in 1975. During the same period the National Science Foundation strengthened its investment in academic research 91 percent, from $256 million to $491 million, while the Department of Agriculture raised its obligations 180 percent, from $104 million to $291 million.

There is a problem in becoming dependent on all this money as a regular source of income. An institution which begins to rely heavily on Federal money must count on it increasing at a rate similar to the increases in the university's budget. These universities are also vulnerable to changes in the projects Washington decides to support: It isn't easy for a school to switch its expertise and facilities from aerospace to psychology and then to snail-darter reproduction research.

Unrestricted aid would soften the effect of the government's shifting research interests, and the universities have been pushing this for a while. The idea, though, has not caught on in Washington. Such assistance, Finn notes, would probably insulate universities from marketplace pressures, thus preserving schools for which demand had shrunk while discouraging newer educational enterprises. It would also invite the heaviest regulation of academia yet, since *all* the actions of a recipient university would become properly subject to government scrutiny. Everyone is opposed to this. And Federal education laws since the 1950's have actually forbidden "any department, agency, officer, or employee of the United States" to exercise "any direction, supervision, or control" over the academic process of instruction. Finn argues that the bureaucrats by and large have obeyed.

In addressing the direct regulation that the laws do impose, Finn claims that it is the lawmakers themselves, hearkening to constituent pressure, who are responsible for the Federal regulatory "swamp." Colleges have so far not been exempted from Congressional insistence on minimum wages for janitors, ramps for the handicapped, and sprinklers for the chemistry labs. Other social regulation covers employee pension plans, equal treatment for men and women students, the confidentiality of student records—and more.

Particularly important is affirmative action, which limits a college's freedom to choose its own teachers. Like most other directives and regulations, the weight of this one does not fall on colleges be-

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cause they are colleges but because they exist as corporations or perform other actions which society has deemed ought to be controlled. Universities employ, invest, house, in some cases feed, and spew forth all manner of effluents. Were they to reject each Federal research grant and flatly deny admission to applicants who received Federal help, they could not escape regulation. According to Washington, there is no reason they should. Universities are simply treated like everyone else.

FINN believes that to thin this regulatory underbrush government must continue resisting academe's plea for unrestricted aid. At the same time, universities must quit uttering general predictions of government-induced doom and address particular regulations, demonstrate their burdensomeness, and suggest their cures. Reaching agreement on which regulations should go is not so easy. "Academics are far more prone to the . . . activist constructions of the Federal role that give rise to increased regulation than is the electorate as a whole. Many factions within the campus community . . . see their own interests advanced by rigorous government regulation of colleges and universities and accordingly fight proposals to constrain it."

It is interesting that as diverse interests within the university keep it from objecting to particular regulations, diverse interests among government agencies have kept Federal influence from coalescing and turning into a real policy toward higher education. A major department with overall responsibility to set education policy would have to unite various existing Federal programs which often aim chiefly at some end other than the good of higher education. Because this would be more likely to disrupt education than accomplish anything else, Finn is opposed. He favors changes in the present system to encourage the government's better understanding of its influence on higher education. Added to his recommendation that universities address specific complaints and control themselves where anticipation of the government's needs suggests likely areas of encroachment, the remedy is mild. It is based on the diagnosis that the patient's health is good. The present system supplies academia and government with services required by each and it seems that this will go on.

The mildness of its suggestions notwithstanding, the achievement of this book is that it presents for the first time a comprehensive view of Washington's relationship with education. The relationship's unswerving theme is that government and academia use one another. Academia receives money indirectly through government-paid tuition, and directly through grants for research it might not otherwise have undertaken. The question raised is how academia differs from other industries that do work for the government. If there is no difference we may stop worrying about academic freedom and start regarding the universities' concern over Federal encroachment in the same way we regard any other industry's. But most people believe that universities *are* entitled to some form of special consideration.

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In the past academia's claim to special treatment has been based ultimately on the assumption that its proper activity is to seek broad perspectives, to consider ends, and to engage in fundamental questioning of the kind that research and reflection themselves provoke. The search itself leads best. When education adjusts its focus in the manner and at the level this book indicates, and when it is quite certain that most students attend college because they want better jobs, there is good reason to think that a change so fundamental has occurred in universities that we should, perhaps, re-examine their purpose.

The change is from an institution which seeks truth to one which provides society with information it values and members of that society with proofs of accomplishment. In light of that change, and the fact that universities and the government seem now to be receiving pretty much what they want from each other, it is impossible to take issue with any of Finn's modest prescriptions for the future of their relationship.

Seth Cropsey is on the editorial staff of Fortune.

Protecting "Personhood"

ROBERT L. MCTIERNAN

***Laurence H. Tribe*: American Constitutional Law.** *Foundation Press. 1174 pp. $22.50.*

HARVARD Law Professor Laurence H. Tribe's *American Constitutional Law* is a superb textbook. It provides clear explanations of complex Supreme Court cases and the tangled history of constitutional interpretation, as well as hundreds of references to decisions, law review articles, and other relevant works. Since constitutional issues are now raised more frequently and in a wider variety of cases than ever before, this well-publicized, highly praised book will doubtless provide a convenient guide for America's nearly half-million lawyers.

The author admits, however, that his goal is not only to provide a clear exposition of the law, but also to guide its development. He believes that the "systematic treatment" of constitutional law can be a "coherent foundation for an active, continuing, and openly avowed effort to construct a more just constitutional order." He is frank about his biases. Judicial restraint to him is just another form of judicial activism. Though he notes what he considers to be the Burger Court's redeeming qualities, he thinks it an unlikely candidate to construct a brighter order and calls its vision of the individual and government, "bordering on the authoritarian, unduly beholden

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to the status quo, and insufficiently sensitive to human rights and needs."

Tribe's "system of thought about constitutional law" consists of seven "models." Each of the first six represents one approach that courts have taken to constitutional issues, so naturally, all past cases fit into at least one of them. "Model I" protects freedom through the division of government power between the three branches of Federal government and the two sovereigns, state and Federal. Under "Model II," the use of government power has "implied limitations" to a narrow range of matters. Just compensation for the public taking of property and the prohibition of state impairment of the obligation of contracts fall within "Model III," which protects "settled expectations" from arbitrary interference by government. "Model IV," which overlaps its predecessor, requires "governmental regularity," mainly in the form of procedural safeguards that must accompany deprivations of liberty or property. "Model V" restricts the legislative power to burden certain "preferred rights," such as free speech or the right to vote. In practice, the equal-protection model, "Model VI," means that certain legal classifications, such as racial classifications, must withstand much closer scrutiny by the courts than usual. "Model VII" is Tribe's own "Model of Structural Justice."

A full third of *American Constitutional Law* is devoted to "Model I"—the model of divided government powers. On this matter, Tribe is, on the whole, free of the post-Watergate strict constructionism that has seized so many intellectuals. Nevertheless, a wariness of Presidential aggrandizement is apparent in his treatment of such traditional topics as inherent powers, the Presidential veto, and the appointment power, and of more contemporary issues such as executive privilege, impoundment, and the War Powers Act.

Moreover, Tribe gives a novel twist to his "Model I"—what he calls the "indeterminate Constitution." He argues that Congress and state legislatures and state courts—whose members all take an oath to uphold the United States Constitution—should be free to interpret its provisions even more broadly than the Supreme Court does. For example, Tribe suggests that a state legislature should not be barred from requiring a hearing before a public school teacher can inflict corporal punishment when, in contrast to the Supreme Court, it believes that such protections are mandated by the 14th Amendment.

This notion of giving everyone his constitutional say is an appealing one. As a practical matter, however, it would have little impact on state courts—which can, and frequently do, base their decisions on their own state constitutions, which usually contain language and guarantees for state citizens similar to those of the Federal Constitution. This practice has already allowed state courts to broaden protections for criminal defendants beyond those promulgated by the Supreme Court and to strike down, as infringements of privacy, laws against the use of marijuana in the home. On the other hand, Congressional power to define 14th Amendment rights could

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have had an enormous impact, but it was turned back by the Supreme Court in 1970, when it struck down a Congressional Act granting 18-year-olds the right to vote in state elections, thus forcing a resort to the amendment process.

The problem with the idea of an "indeterminate" Constitution lies more in the confusion that would result than in a threat to the ultimate uniformity of constitutional law, since the question of whether a Supreme Court holding was being embellished or undermined by a given decision of a state court or legislature would have to be determined on a case-by-case basis. It is also hard to resist the suspicion that Tribe's enthusiasm for competing interpretations of the Constitution flows from his distress at the Burger Court's conservatism. One cannot help wondering whether his enthusiasm would wane if a state court or legislature, in the wake of the *Bakke* decision, banned affirmative action programs (of which Tribe is a proponent) at state universities on the grounds that they deprive white citizens of equal protection.

Most students of *American Constitutional Law* will probably consider the sections dealing with individual rights to be the most important in the book. This is partly because rights have become fashionable in America. President Carter's concern for human rights, we are told, is the linchpin of our foreign policy, and even philosophy professors are showing new interest in the old notion that there are some things the state should not be able to do to its citizens, even to improve their diets or save their souls. But more important, faith in the "laws of nature and of nature's God" as a source of the moral basis of government has disappeared. We look instead to the Supreme Court to define our national values, to provide a public philosophy, by telling us which activities are worthy of special protection from the will of the majority.

The content of those rights, of course, has changed drastically over the last two centuries along with our changing understanding of the relation of the state to the individual. "Model II" rests on the idea that government has implied limits, that it can rightfully act only to achieve certain narrow ends. This model is essentially an expression of the Anglo-American tradition of natural rights. In 1798, the Supreme Court, in *Calder v. Bull,* set aside a Connecticut statute that invalidated a probate court's decree disapproving a will. Although it could point to no violation of a specific constitutional command, the Court held that the state government had simply exceeded its legitimate authority, that it would be against reason and justice for a people to entrust a legislature with such power. Tribe claims that this decision is based less on the natural rights of those harmed by the statute than on the inherent limits of just government. This is a puzzling remark, since the whole basis of the Founders' view of natural rights was that free, equal, and rational men would surrender to government only those powers consistent with life, liberty, and the pursuit of happiness.

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In the late 19th and early 20th centuries, Tribe's "Model II" became preeminent, as a great deal of economic and social legislation was struck down as a violation of "substantive due process." The courts of this period did not forbid economic regulation, as long as it bore a "real and substantial relationship" to the public health, morals, or safety, and it was necessary to accomplish those ends. They did, however, take a very narrow view of the public welfare. In *Coppage v. Kansas,* the 1915 case that Tribe regards as the quintessential "Model II" decision, the Court overturned a law against "yellow dog contracts," which forbade employers from demanding that workers agree not to join a union as a condition of their employment. Although sensitivity to disparities in bargaining power is part of our commercial and constitutional law today, the Court explained then that such "inequalities of fortune" were inherent in the right to make a contract and were insufficient grounds for so drastic an impairment of the rights of labor and its employers.

Under tremendous political and intellectual pressure, the Court abandoned this approach in the 1930's and made a simple change in the test of the constitutionality of economic legislation—a change that helped further a revolution in American government. To date, as long as economic regulation is reasonably related to any proper legislative goal, which is defined very broadly, and any set of facts —even a hypothetical one—would support the legislature's judgment, the Supreme Court will let it stand.

Some state courts, by applying their own state constitutions, have continued to restrict legislative discretion in making economic policy. But as a national question, this is a dead issue, a battle long decided. So it is intriguing that a recurring theme of *American Constitutional Law* is that the retreat from protecting economic rights, made in the midst of the Great Depression, perhaps went too far, that the reaction against "Model II" decisions might have been an overreaction.

Tribe quotes with approval the comment made by Justice Stewart, who cited Locke and Blackstone, that the "dichotomy between personal liberties and property rights is a false one." But Tribe would have the courts go even further than they have been willing to in reviewing the actions of the legislatures in this area. Tribe sees the right to choose a vocation as a fundamental personal right. By this he means that government should not be permitted to close off certain occupations to a group of people without good reason. In the course of this discussion, Tribe refers to Robert G. McCloskey's classic article on economic due process. McCloskey argued that most people value their freedom to choose a job as highly as the freedom to speak their minds: "Mark Twain would surely have felt constrained in the most fundamental sense, if his youthful aspiration to be a river-boat pilot had been frustrated by a State-ordained system of nepotism."

In fact, anomalous as it may seem at a time when courts are willing to run prisons and school districts, there is little chance that

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the Supreme Court will return to any closer scrutiny of economic legislation. But a few commentators, recognizing that the small businessman or individual job seeker is frequently as powerless as any minority group to influence government, have called for a return to a stricter standard of review of laws involving economic regulation. One commentator has suggested that the courts return to the principle that a chosen form of economic regulation satisfies due process only when, in the court's judgment, government cannot accomplish its purpose through some other means that is less of an infringement of individual choice and the operation of a free market. Justice Jackson, in a dissenting opinion nearly 30 years ago, advocated more rigorous application of the equal protection clause to economic regulation. This, he argued, would allow a legislature to deal with economic problems in whatever ways it thought best, but would prevent discrimination against citizens that is unrelated to the purpose of the legislation.

It would have been interesting to see if Tribe, who is thoroughly committed to judicial activism, could work out an approach to judicial review that would both loosen government restrictions on economic freedom and avoid a return to the callous unrealism of what he calls "Model II." Unfortunately, he dodges the challenge. His interest in protecting economic freedom in the traditional sense ends with the lowering of express legal barriers to employment—exactly the point at which McCloskey predicted, more than 15 years ago, that the courts would probably stop.

Instead, Tribe concentrates on redefining economic freedom in a way that would simply add court-imposed restrictions to those that already exist. For example, in discussing minimum-wage laws, Tribe chides the Supreme Court for holding only that Congress and the legislatures were *entitled* to set a minimum wage instead of saying that they were *right* to do so. Economic liberties, he argues, are not meaningfully protected by the free market. Therefore, minimum-wage laws are not instrusions on freedom but rather attempts to combat economic subjugation.

Throughout *American Constitutional Law*, Tribe argues that minimum economic benefits and social services increase the freedom of their recipients and are constitutionally based, although he assures us that such a view would not entail a legal remedy for every instance of low wages or unmet needs. One of Tribe's concerns is that the government can "purchase the silent acquiescence" of the poor through inaction that jeopardizes physical survival, in that one needs a decent level of nourishment, shelter, clothing, medical care, and education before one can express oneself. As other possible bases for imposing similar affirmative duties on government, Tribe sees the protection that the courts have already set up against particularly brutal, offensive, or intrusive physical searches, as well as decisions holding that the medical needs of prisoners cannot be ignored.

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Tribe also finds support for his view that government has affirmative duties in an ingenious reading of *National League of Cities v. Usery*, decided in 1976, in which the Supreme Court struck down a Congressional extension of the minimum-wage and maximum-hours provisions of the Fair Labor Standards Act to nearly all state employees. In his opinion for the Court, Justice Rehnquist shows concern mainly for state sovereignty and, in particular, the threat that Federal decision making might replace state policies. Tribe, however, sees the Supreme Court's concern that minimum-wage requirements might force some states to curtail "important government activities" as a precursor of the recognition of the individual citizen's right to those activities.

In fact, a judicial determination of a "right" to public assistance is a highly unlikely prospect, and would be unnecessary as well. Americans have not been ungenerous with the poor; they accept, with Samuel Johnson, that "a decent provision for the poor is the true test of civilization." A constitutional right to welfare, for example, is not needed to preserve it and might lead to judges having to decide budgetary priorities, to determine what constitutes a "decent minimum" of assistance, or—perhaps even more important—to determine the form in which that minimum must be delivered. Surely, these are proper areas for the experimentation and flexibility of legislative programs and not for firm constitutional rules. The vast majority of Americans have consistently rejected express appeals for outright distribution of income and wealth. Yet the very social services they so ardently support have a redistributive effect. The line between taxing and spending for the general welfare and unjustly depriving people of the fruits of their labors is sometimes a faint one. It is best to let the people's democratically elected representatives do the drawing.

THE change in the definition of individual rights reflects the shift from Tribe's "Model II" to his "Model V." This latter model, which prevails today, is not based on any natural limit on the power of the state. In promoting the public good, the government can theoretically reach and regulate any subject or activity, as long as it interferes as little as possible with certain "preferred rights." The Constitution is still invoked to preserve liberty, but as Tribe reminds us, the error of giving liberty a "perverse content" is now avoided. Thus freedom of expression and association, the right to participate in the political process and to practice one's religion, all derived from the Bill of Rights, become islands of liberty in a sea of state power.

The Bill of Rights, however, was designed to prevent Federal encroachment on state sovereignty. The judiciary has seldom considered these Amendments alone sufficient protections for personal freedom. Rights long considered fundamental, such as the right to travel or to send one's children to private school, cannot be located specifically in the Constitution. Therefore, just as some Supreme

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Court Justices have invoked the "concept of ordered liberty" or looked to the "indispensable conditions of an open as against a closed society," Tribe relies on what he calls the "rights of privacy and personhood" to guarantee what he sees as essential individual rights.

Past Courts have referred on occasion to a right of privacy, but it was not considered a fundamental constitutional right until 1965, when the Supreme Court decided in *Griswold v. Connecticut* that a state could not subject married couples to criminal penalties for using contraceptives. Writing for the Court, Justice Douglas rested the decision on "zones of privacy" created by the guarantees of the Bill of Rights and the effect of "penumbras, formed by emanations from those guarantees, that help give them life and substance." In a famous concurring opinion, Justice Goldberg appealed to the sanctity of marriage and the family as well as to the Ninth Amendment, which reveals that the Founders intended that the enumeration of rights in the first eight Amendments "not be deemed exhaustive."

As it has developed as a constitutional right, privacy has had little to do with the usual media portrayal of it as a shield, as something to keep strangers from rooting through copies of our canceled checks. In the name of privacy, the Supreme Court has held that states cannot ban abortions in the first six months of pregnancy, deny a teen-ager the right to buy contraceptives or allow her parents a veto over the decision to get an abortion, or punish the private possession of pornography.

Tribe, however, stretches the right to privacy further, transforming it into a bulwark against majority rule that nearly overshadows all other constitutional values. For Tribe, it is not merely a narrow protection against "unwanted stimuli" and "intrusive observations," as it has been described. It is the "outward-looking" element of privacy, the right to project one's identity into the world, which Tribe regards as "central to any adequate conception of the self," that is most important. On the surface, this might appear to be a form of free speech. But neither the purpose nor the effect of projecting one's identity need be to influence public affairs. To Tribe, the goal is self-expression for its own sake.

This ideal blends with Tribe's understanding of other fundamental rights. For example, Tribe concedes that the First Amendment is central to a responsible and responsive democracy, but he sees this as merely the "instrumental" role of free speech. Political participation also "enhances personal growth and self-realization." This distinction is made again in Tribe's discussion of procedural due process. The instrumental value of giving notice and holding a hearing before liberty or property are infringed is to guarantee accuracy and consistency in decision making, while the intrinsic value of due process is in providing an opportunity for participants to express their dignity as persons.

The "prolific efforts of the states to regulate personal appearance"

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is one of Tribe's targets. Clothing and hairstyle may communicate an individual's "commitment to a change in social values." But even if there is no message in the wearer's apparel, "to compel a person to appear in a way that he or she finds offensive is an invasion of and a falsification of the self." Tribe maintains—one hopes incorrectly—that personal appearance may be one of the few ways in which individuality may be preserved in modern mass society.

Tribe does not think that government prohibitions of sexual behavior can survive indefinitely because they regulate conduct that is "central" to the personalities of those singled out by the law. In fact, Tribe finds it "likely" that "no unconventional form of consensual human sexuality can be excluded from the protected sphere *solely* on the ground that it is thought by the majority not to draw on the historically deepest wellsprings of human emotions and instincts." Thus, while rape and incest laws survive because they protect free choice in sexual matters, laws against homosexuality and fornication must go. Laws against polygamy, adultery, group sex, and bestiality "may pose more difficult questions," according to Tribe, but the message is clear that restrictions on the first three, at least, should be abolished.

THE lengths to which Tribe takes the right of self-expression are most apparent in the section "Government Interference with Choice of Life Plan, Pattern, or Style: Risk Taking." According to Tribe, it is "arguable" that the right to life includes the right to commit suicide, or at least the right to risk one's life. Though some of us may view motorcycle riding as entitled to only slightly more constitutional deference than snake handling, the right of cyclists to ride without helmets is Tribe's chief example of the right to take risks. Tribe concedes that injuries to helmetless riders impose costs on society. Nevertheless, footnoting *Easy Rider* and *Zen and the Art of Motorcycle Maintenance,* he argues that riding without helmets is more important to the "life-style" of motorcyclists than going without seatbelts is to the ordinary motorist. One of Tribe's main arguments against helmet laws is that they infringe on the "communicative core" of helmetless riding, and he strongly suspects that the aim of legislators is really to suppress what they see as an advertisement of "defiant bravado."

The common thread in most of Tribe's conclusions is the right "to be the master of the identity one creates in the world." It is a constitutional right to be oneself, a corollary of the principle that government cannot prescribe belief. Though it is not an especially elevating ideal—freedom can be used well or wasted—as a general principle, it is a difficult one to quarrel with in these times. It might even be a useful guide for a state legislator or local official. The problems begin when it is raised to the level of a fundamental constitutional right, with the requisite presumption that it outweighs all of the other goals and policies of government. The courts would then be called on even more frequently than they are today

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to determine the relative importance of various state and constitutional interests. There is nothing wrong with such balancing; it is the main work of prudence, the preeminent political virtue. The question is whether some more political body, sensitive to the various needs, interests, and even passions of the community should do it. Perhaps if Tribe were truly enamored with "democratic constitutionalism," he would have more confidence in the willingness of participants in democratic politics to abide by the dictates of tolerance and to respect liberal values. Placing all important decisions affecting individual rights in the hands of judges might even be a cause of constitutional insensitivity among public officials, who come to regard individual liberty and constitutional rights as solely a matter for the courts.

Just as disturbing, however, is the fact that although Tribe lists what he considers the essential attributes of personhood and privacy, he does not provide any principle to identify what makes those attributes essential. After all, nearly everything a person does or wants to do is, in a sense, related to his personal identity—but not everyone would agree with Tribe that group sex and motorcycle riding are essential to it. "The best we can hope for," Tribe writes, "is to encourage wise reflection—through strict scrutiny of any government action or deliberate omission that appears to transgress what it means to be human at a given time and place." Tribe's definition of personhood is a lot like Justice Stewart's famous definition of pornography: He knows it when he sees it.

This difficulty in defining "personhood" parallels a broader problem: finding a rationale or justification for judicial review. In order to resolve constitutional issues, the language of the document must be interpreted. With nearly every new generation, words and phrases such as "liberty" and "equal protection" have been given a new meaning. Tribe calls reconciliation of this power of interpretation with the principle that government derives its just powers from the consent of the governed, the "antimajoritarian difficulty." It is a problem that has troubled many of our finest constitutional scholars. Herbert Wechsler searched for guidance in "neutral principles." Alexander Bickel could only counsel judges to exercise prudence and restraint. Raoul Berger, who gained renown as an expert on impeachment and executive privilege, advocates carrying out the precise intentions of the Framers to the extent they can be discerned, even though he believes that this would have made such otherwise laudable efforts as the school-desegregation and reapportionment decision impossible.

Tribe, however, is surprisingly unruffled by this dilemma, and writes in regard to judicial review that "it cannot be consent which is the sole touchstone of legitimacy." In his view, decisions are legitimate "because they are right." Tribe never explains why some decisions are right, why certain freedoms should be "preferred," other than because he prefers them—and, above all, why men are

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obligated to pursue happiness only in ways that do not interfere with the freedom of others.

On the first page of his book, Tribe states that his treatment of constitutional law is "sensitive to but not centered on social and political theory." Tribe's own "Model of Structural Justice," "Model VII," bears this out. It provides only that legal problems be approached according to whichever of his first six models achieves the end of human freedom. According to Tribe, in some matters—for example, childbearing—freedom is best served by putting them beyond governmental reach, and in others, such as the minimum wage, by allowing or requiring government to act. A reference to "the much larger enterprise of identifying the elements of being human" is the closest Tribe comes to providing a theory of values to accompany his system of constitutional law. Nor does he consider the possibility that such a study of man might lead to conclusions about what is "right" that are quite different from his own. That failure to vindicate his own preferences as other than mere preferences, mirrors a larger failure of this informative and often insightful work—a failure to demonstrate the legitimacy of judicial review, the most perplexing constitutional problem of our time.

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The Elusive Environmental Golden Mean

TED DIENSTFREY

***Samuel S. Epstein*: The Politics of Cancer.** *Sierra Club Books. 583 pp. $12.50.*

***Merril Eisenbud*: Environment, Technology, and Health.** *New York University Press. 384 pp. $19.50.*

SAMUEL EPSTEIN'S *The Politics of Cancer* is written with the self-righteous anger of one who "knows" the truth but feels blocked by conspiracies and the incompetence of others. Epstein states that the increased rate of cancer in the United States since the turn of the century is directly related to the increased use of chemicals. Moreover, Epstein argues that we can identify the specific carcinogenic substances with unambiguous statistical studies—studies that deal with exposure to chemicals and increased rates of human cancer, or with increased cancer rates in laboratory animals given very high levels of a suspected carcinogenic substance.

Since these statistical tests are understood by a very low percentage of our elected officials or of the voters themselves, Epstein is in effect demanding that control of how much of what is made where

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should be decided by those who agree with his particular interpretation of these statistics and with his particular cost-benefit analysis. While Epstein does see the "politics of cancer" as a battle for power between the forces of good and evil, it is not so clear that he really understands what type of power he is asking us to give him.

Epstein claims that it is outrageous that so much of the government and private effort in cancer research is going for investigations in how the cancer cells grow within us. This research is based on the fact that not everyone who smokes gets cancer and not everyone who is exposed to asbestos or vinyl chloride or red dye No. 40 develops cancer. Epstein dismisses the possibility that we may be close to understanding how cancer cells multiply and spread, and that with this information we will be able to improve the body's natural immunization system and thereby "conquer" cancer.

Is there a certain arrogance in even suggesting that we can conquer cancer? Well, we have basically conquered influenza and pneumonia, tuberculosis, and gastroenteritis, which in 1900 were the three leading causes of death and resulted at that time in 549 deaths per 100,000 population, or 31 percent of all deaths. But rather than reflect on the implications of having eliminated these three major causes of death, Epstein argues that since the rate of cancer death increased from 64 per 100,000 in 1900 to 172 per 100,000 in 1975, we have made no progress in the fight against cancer.

To conquer cancer we have to understand and manipulate genes and chromosomes. Epstein has no patience for anyone who suggests that, while we should continue to reduce the amount of carcinogenic substances in our air, water, and food, our ultimate success will come not from statistically correlating cancer with some agent in the environment, but from understanding the molecular changes within individual cells.

That Epstein's approach has major problems ought to be clear from our experience with cigarettes, an agent that seems to be correlated with heart attacks, cancer, and other lung diseases and that seems to multiply the effects of other carcinogenic substances such as asbestos. Many who have not stopped smoking seem to be willing to accept the health danger in order to satisfy some need or want for nicotine. As a society, what do we do with those of us who have made a decision to continue to smoke even though that decision significantly increases the odds of a heart attack and of cancer? (That I, myself, have never smoked, and do not like being in a smoke-filled room, doesn't make this question any easier to answer.)

Epstein's book is written in the hysterical-conspiratorial tones made popular by the never-ending Nader reports. While one may be tempted to ignore this type of book, it is written by an active and successful participant in the "cancer-committee" section of the political community. (Epstein throughout the book and in its footnotes informs us of the government reports he has helped write, the government ad hoc groups he has advised, and the pressure groups he has helped form.) It should therefore be read more as a political

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document than for any insight it gives us on what we know about cancer and how we should proceed. Even though there is some appeal in the simplistic approach of banning anything that Epstein and his colleagues believe causes cancer, it is doubtful that a majority of us are willing to turn over such power to this group of self-appointed guardians. And if Epstein's book presents the best arguments for such a power shift, there is no reason why we should.

MERRIL EISENBUD'S *Environment, Technology, and Health* is a much harder book to come to terms with. Eisenbud reviews the significant improvements in the environment that have been made in the last hundred years and then highlights all the major existing areas of concern. The implication is that we are in pretty good shape and we can expect further improvement. Eisenbud argues that given our present understanding of our environment, there is no reason to believe that we have triggered an imminent environmental disaster.

Eisenbud, like Epstein, has extensively studied and written about various aspects of technology and health. However, Eisenbud, unlike Epstein, has had the responsibility of managing both research agencies—at New York University's Institute of Environmental Medicine—and public agencies—the Atomic Energy Commission's Health and Safety Laboratory and the New York City Environmental Protection Administration. While Epstein brings us the perspective of the angry critic who is never completely listened to, Eisenbud brings us the perspective of the battle-scarred decision maker who has daily faced decisions that required the wisdom of Solomon.

Eisenbud suggests that to make systematic, lasting progress in reducing environmental dangers we need an historical perspective on what has happened over the last few generations, a systematic evaluation of alternative strategies, and the political self-restraint not to try to regulate too much, too soon. The argument is not for no environmental regulations, but for regulations that are based on a better understanding of the costs and benefits.

The need for some regulations is obvious. If we are exposed to a critical level of carbon dioxide, we will die in a few moments. We had better regulate carbon-dioxide levels. Most regulations are more difficult to justify. If we are exposed to a critical level of some chemical, say vinyl chloride, the death rate after 20 years may increase from a "normal" 6 per thousand to 9 per thousand. But since vinyl chloride is used in all kinds of life-sustaining and life-enhancing projects, the banning may also result in a complex chain of events that would cause more premature deaths than the banning saves.

Eisenbud just does not see the cancer epidemic that Epstein uses to justify the assertion that we must rush to the environmental barricades. He agrees that the overall death rate per 100,000 by cancer for each age cohort has increased dramatically in the last 30 years, particularly for those over 60. However, if one omits from these figures the increase in the lung-cancer death rate in the last 30 years,

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most of which we believe is caused by smoking, Eisenbud reports that *the current cancer rate by age cohort is now slightly lower than 30 years ago.* Moreover, since the elderly have always had a higher cancer rate, and since we now have more older citizens, the absolute increase in the number of cancer deaths is not an indication of any kind of "environmental breakdown."

As an example of political overreaction, Eisenbud points to the auto-exhaust rules. He cites two National Academy of Science studies, done in 1973 and 1977, that were unable to find a relationship between Los Angeles's smog and human health in that city. Now, this doesn't mean that there may not be some cumulative effect of smog that we still haven't uncovered. Nor does it mean that we shouldn't work systematically to reduce auto exhaust. But it might mean that we should not immediately assume that anyone who argues for an orderly introduction of exhaust devices is part of an insidious conspiracy that wants to destroy clean air and human life.

In a related air-pollution issue, various Federal regulations have committed us to spend approximately $4 billion a year (a sum equal to the cost of over 80,000 new homes a year) to decrease the amount of sulphur dioxide from power plants. We are spending these large sums even though we are having difficulty finding the health benefit of the very significant reduction (up to nine-tenths) in sulphur dioxide that has occurred in many of our cities in the last 15 years. Eisenbud doesn't argue that we shouldn't spend the $4 billion to improve environmental health, only that we might get a better health benefit from an alternate policy of expenditures.

Most of the time, most of us take for granted that when we flip a switch a light will go on, or when we go to the store we will find shelves bursting with all sorts of relatively inexpensive food. Yet providing electricity or food is the end product of a great many decisions that have been made by our government officials and corporate technicians.

Because of the nature of human knowledge, these production decisions must be made with incomplete information and involve varying degrees of risk. Whenever things turn out wrong, the media are quite willing to denounce the system that made the decision and took the risk. And after a complex decision has gone wrong, we can always find the report which indicated that the decision certainly did involve risk and therefore was mistaken.

What we now have to decide is whether it is morally desirable to create institutions in our society that would result in less risk-taking and, inevitably, a much lower rate of economic growth—perhaps even no growth at all. Often those of us who are well-housed, well-fed, and well-entertained see no reason why we should take risks for the sake of growth. After all, we have a lot to lose and not much to gain. However, those who are poorer and want a better material life for their families might feel that we should praise the Lord and take the unknown risks. They have not much to lose and a great deal to gain.

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Parents try to explain to their children the difference between being resolute and being foolhardy. The Epstein and Eisenbud books make it clear that it is precisely the drawing of this line between resoluteness and foolhardiness that we, as a society, are involved in. A careful reading of the Eisenbud book would help us all prepare to proceed.

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Honorable Intentions

SUSAN MELD SHELL

***Charles Fried*: Right and Wrong.** *Harvard University Press. 225 pp. $15.00.*

ACADEMIC philosophy has been undergoing a kind of moral revival. The positivism and value-relativism that long prevailed among academic philosophers are giving way to a new interest in moral absolutes and "objective values," as well as a new concern with concrete issues of public life. The popularity, both in and out of academe, of John Rawls' *A Theory of Justice* is one signal of this change. Last year, legal theorist Ronald Dworkin brought Rawlsian arguments to bear, with considerable publicity, on the Bakke case. Now another legal theorist, Charles Fried, has published a book that attempts to shed the light of this new moral awareness on the general subject of right and wrong.

Right and Wrong takes as its point of departure the moral conviction that there are some things that it is wrong to do "no matter what." Like other followers of Rawls, Fried associates his views with the philosophy of Immanuel Kant. Like Rawls he opposes them to utilitarianism, which, according to Fried, holds that actions are justified wholly by their consequences or results. And like Rawls he opposes utilitarianism in the name of human rights. It is the concept of rights that gives his moral conviction much of its substance. To say that an action is wrong no matter what is, for purposes of Fried's main argument, to say that it violates someone's rights.

What is different and refreshingly astute in Fried's work is the emphasis he places on the correlative notions of intention and responsibility as foci of judgments about right and wrong. According to Fried, an act violates an individual's rights (and is therefore categorically wrong) only if it is done intentionally. I may have a lesser sort of liability for unintentional ills whose victims I ought perhaps to compensate; but generally speaking, I am categorically responsible only for ills that I intend. Fried's association of rights and intention echoes Kant, who argued that we are responsible only

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for our intentions and that rights are violated only by intended harms. In unravelling the subtleties of the concept of intention, however, Fried, who is a professor of law, relies less on Kant than on the canons of legal practice, contemporary and traditional. He gets at the concept of moral intention by way of the related concept of legal guilt or culpability. And like any good lawyer, Fried is at least as concerned with absolving from guilt as with establishing it. This peculiarly legal emphasis has important, if unintended, consequences for his theory and his audience. It also marks his silent but substantial departure from the letter and spirit of Kant.

Kant's rhetorical opposition was the moral skeptic. Fried's is a kind of "obsessive" moral fanatic who, consistent with his "consequentialist" premises, would hold himself and others infinitely responsible for all the effects of everything they do—the logical extension and *reductio ad absurdum* of the view that we are responsible not for what we intend but for what, through act or omission, we simply cause to occur. Thus, while Kant was concerned to assert the fact of moral responsibility before an audience that doubted its very possibility, Fried assumes the fact of responsibility and is rather concerned to *limit* it. In a revealing example, Fried observes that intentionally plunging a knife into a victim's breast is morally of a different order than unintentionally allowing, by raising the price of domestic wheat, a stranger in a foreign land to starve. Killing is different from letting die. And, Fried significantly goes on to say, our having more than others, and being thereby in a position to help them, does not in itself entitle them to our help. The mere fact that we could do someone some good (and there are, argues Fried, a paralyzing infinity of mutually exclusive opportunities to do so) does not give him a categorical right to our benevolence.

In drawing the boundaries of right and wrong so narrowly, Fried speaks both to extreme proponents of "revolutionary justice" and to more moderate supporters of "welfare rights" and other claims to egalitarian redistribution. Unlike libertarians such as Robert Nozick, however, he does not oppose such claims categorically. Like Rawls, Fried hopes to uphold such claims in the name of rights, while defending rights against utilitarianism.

To reconcile these competing tendencies, Fried distinguishes between "positive rights" to goods that are inherently scarce and "negative rights" not to be interfered with by fraud or force. Negative rights entail quasi-absolute duties and prohibitions: They ought not be violated "no matter what." Positive rights, or claims to a "fair share" of the scarce resources of the community, ought not be upheld at the expense of negative rights. Accordingly, one's personal skills and labor ought not be considered part of the pool of resources to be divided according to a "fair share" principle. Generally speaking, I have a negative right to use my time and talents as I please, to live according to a "life-plan" of my own choosing. If I am a lawyer or physician, no one has a right to the use of my skills unless I agree

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(ordinarily, Fried assumes, for pay) to attend him. For reasons of right as well as efficiency, the calling forth of talent and effort is best left to the workings of the market. Correction of any resulting inequities, on the other hand, is appropriately left to the government, which redistributes income according to some external principle of justice.

If Fried's distinction between positive and negative rights seems strangely familiar, it is because his theory is meant to fit and supply moral grounds for the distinction, widely popular both in and out of public-policy circles, between market efficiency and distributional equity. (See, for example, Arthur M. Okun's influential *Equality and Efficiency: The Big Tradeoff*.) Like the so-called New Welfare Economists, Fried is convinced of the appropriateness of money or market price (as opposed to wants or needs, which are both incommensurable and subjective) as an objective measure of "welfare" or value. Money, according to Fried, indicates objective value by measuring the desirability of goods (or degree to which they are desired), relative to their scarcity. Thus, he tells us, in a "well-functioning economy" the price one's services can command will reflect their value. And the "fair share" to which every citizen is entitled will similarly be measured in money.

Efficiency and redistributive equity are, as Fried observes, inherently in tension, unless lump-sum transfers, like some "tasteless, odorless, colorless gas," come "once when no one expects them and never again." And yet, barring such acts of heaven, Fried's positive and negative rights seem even more difficult to reconcile. Fried takes pains to show that market efficiency has normative force only if premarket negative rights—such as the right to freedom from physical intimidation—are assumed, and can neither be taken away nor conferred in the bargaining process. (The Hobbesian market, interestingly enough, does not assume such rights, but then the "moral force" of Hobbesian bargains is open to question.) Negative rights are asserted against both the government and individuals. Positive rights, on the other hand, unless individuals assume specific duties with regard to them, are asserted primarily against the government. How, one is finally forced to press, is government to assure everyone his positive right to a "fair share" and yet do so without violating the negative rights that underlie efficiency?

Fried's interesting, but less than satisfying, answer is to propose a consumption tax as the only just means of redistribution. A tax on consumption has, under normal conditions of scarcity, an appeal that a tax on income lacks. Hobbes made this point long ago in *Leviathan*:

> For what reason is there, that he which laboureth much, and sparing the fruits of his labour, consumeth little, should be more charged, than he that living idly, getteth little, and spendeth all he gets; seeing the one hath no more protection from the commonwealth, than the other? But when the impositions, are laid upon those things which men con-

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> sume, every man payeth equally for what he useth: nor is the commonwealth defrauded by the luxurious waste of private men.

Nevertheless, in a post-Keynesian economy it is at least arguable that consumption or spending, by stimulating production, may constitute a public benefit. So too it is possible that vast private accumulation, even in the form of "claims on the National Treasury" that Fried endorses as a last resort, might constitute a public harm. In any event, the case for a consumption tax seems to rest, even in Fried's own terms, more on matters of "utility," or of what constitutes a public benefit, than he is willing to concede.

More difficult still, Fried refuses to define a "fair share" or the principle of justice that can properly determine it. He intimates that redistribution ought to tend toward equality, but beyond this suggestion he will not go. There is some reason, perhaps, for this refusal. Another book, on distributive justice, may be on the way. And in the meantime, liberals who disagree about what constitutes a proper principle of redistribution (a guaranteed minimum income, Rawls' "difference principle," or whatever) may find themselves in agreement with Fried's distinction between positive and negative rights.

There emerges from this distinction, however, a disquieting division of moral labor. In one's capacity as a doctor, lawyer, or musician, one has a right to the income (at least for purposes of savings and investment) that one's services can command in the market. In one's capacity as a citizen and voter, one has a duty to support policies that will assure to all their "fair share." One must do one's "fair share" to guarantee the positive rights of others, but one need not do "everything." Indeed, Fried suggests, one perhaps need do no more than vote for candidates who will uphold principles of justice as one happens to understand them.

In suggesting that our duty to provide others with a "fair share" can be dispatched by voting for the right candidate on election day, Fried soothes the troubled conscience of the affluent would-be egalitarian. And in further suggesting that our more general duty to do good is adequately exercised when we vote for justice, and provide a service whose worth is recognized—and remunerated—by the market, he gives special assurance to "professionals." For in a "reasonably just society" loyalty to the canons of one's profession is said to fulfill the requirements of moral goodness. According to Fried, "a good lawyer is a good man" even if "he chooses his clients among those who can pay the most or whose cases involve travel and excitement." So too, the doctor "who serves his patients with skill and devotion is a good man, however he chooses those patients" and however greedy or vain his motives. For the professional relationship is the same "whatever the reason—pay, ambition, curiosity, excitement, pity, indignation—one may have had for assuming it."

In the last analysis, *Right and Wrong* both benefits and suffers from its author's professional dedication. On the positive side,

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Fried takes far more seriously than some other recent thinkers the quasi-legal notions of intention and responsibility. Indeed, although he calls himself a Kantian, his subtle treatment of these notions draws more from classical and traditional Judeo-Christian sources than from the abstract rigors of the Categorical Imperative. He is, finally, less interested in Kantian universals than in particulars—our special and manifold duties to those physically, morally, and professionally close to us. And unlike Kant's absolutes, Fried's are only nearly so. Kant was willing to proclaim, "let justice prevail, though the world perish." Fried concedes that in situations of the gravest moral extremity, ordinary moral principles may no longer apply.

But Fried's "theory of rights" pays the price of his moderation and concreteness. Kant's theory of rights rested on an exalted ideal of human freedom as a power to "act for the sake of the moral law alone" and thereby transcend in dignity an unworthy egoism. Fried's theory of rights, like Rawls' theory of justice, rests on a less demanding notion of freedom as a simple power of choice, a capacity to "choose a life-plan." Fried collapses the Kantian distinction between the legally blameless and the morally worthy or meritorious. Where Kant located human dignity in the power of reason to transcend egoism, Fried, like Rawls, locates human dignity in a kind of rationally planful egoism. The result is not only a less morally compelling case for human rights, but also a dwarfed standard of human goodness that reflects neither classical nor Kantian ideals. Thus, on the negative side, Fried's theory leaves the impression of having been worked out, in the last analysis, to support his belief that a good professional is a good man, whatever his motives. Fried's regimen of reduced moral expectations in the private sphere may be salutary, especially in a climate of moral fanaticism. But these deflated expectations, particularly when compared with his inflated expectations of benevolence in the public sphere, are also morally and politically disquieting.

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